119-1-45

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1273. 843

THE CHOCTAW NATION, APPELLANT,

vs.

THE UNITED STATES.

FILED MARCH 1, 1886.

No. 1276. 850

THE UNITED STATES, APPELLANT,

vs.

THE CHOCTAW NATION.

FILED MARCH 2, 1886.

APPEALS FROM THE COURT OF CLAIMS.

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OCTOBER TERM, 1885.

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1 In the Court of Claims.

THE CHOCTAW NATION
vs.
THE UNITED STATES. } No. 12742.

I.—*Statement of omitted pleadings.*

The original petition of the claimant was filed June 13, 1881.
By leave of court an amended petition was filed January 24, 1882.
Defendants filed a demurrer Dec. 19, 1883.
By leave of court a second amended petition was filed January 26, 1884.
By stipulation of counsel for claimants and defendants, filed February 16, 1886, and the order of court thereupon, the foregoing pleadings are omitted in this record on appeal.

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

2 II.—*Petition as amended—Filed Feb'y* 26, 1884.

The following petition as amended was, on motion of claimant, the defendants consenting thereto, ordered to be substituted for all former petitions and filed February 26, 1884.

To the honorable the chief justice and judges of the United States Court of Claims:

Your petitioner, the Choctaw Nation, in its own behalf and in behalf and for the benefit of certain individuals who are members and citizens of the said nation and interested in the subject-matter of this petition, respectfully represents—

FIRST.

That this petition is filed, and the jurisdiction of this court is invoked, under and by virtue of the provisions of the following act of Congress, viz:

AN ACT for the ascertainment of the amount due the Choctaw Nation.

Whereas the Choctaw Nation, for itself and in behalf of individual members thereof, makes claim against the United States on account of various treaty provisions which it is alleged have not been complied with: Therefore,

Be it enacted by the Senate and House of Representatives of the
3 United States of America in Congress assembled, That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon; power is hereby granted the said court to review the entire question of differences de novo, and it shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of eighteen hundred and fifty-five; and the Attorney-General is hereby directed to appear in behalf of the Government; and if said court shall decide against the United States the

Attorney-General shall, within thirty days from the rendition of judgment, appeal the cause to the Supreme Court of the United States; and from any judgment that may be rendered, the said Choctaw Nation may also appeal to said Supreme Court: Provided, The appeal of said Choctaw Nation shall be taken within sixty days after the rendition of said judgment, and the said courts shall give such cause precedence.

SEC. 2. Said action shall be commenced by a petition stating the facts on which said nation claims to recover, and the amount of its claim; and said petition may be verified by either of the authorized delegates of said nation as to the existence of such facts, and no other statements need be contained in said petition or verification.

Approved March 3, 1881.

SECOND.

The "questions of difference" between the United States and your petitioner result from the non-performance and non-fulfillment by the United States of the obligations assumed by it under the treaties concluded between your petitioner and the United States on the 18th day of October, 1820; the 20th day of January, 1825; the 27th day of September, 1830; the 22d day of June, 1855; and the 28th day of April, 1866, as will more fully hereinafter appear. (Statutes at Large, Indian treaties, vol. 7, pp. 210, 211, 212, 213, 234, 235, 333 to 341; 11 Statutes at Large, p. 611; 14 Statutes at Large. p. 769.)

4 THIRD.

That under and by virtue of the terms of the treaty concluded between the United States and your petitioner on the 18th day of October, 1820, it was provided, amongst other things, that your petitioner should cede, and did thereby cede and convey to the United States all that part of its lands situated in the State of Mississippi described in the first article of the said treaty; and the United States, in consideration thereof, stipulated with your petitioner as follows:

"ARTICLE II. For and in consideration of the foregoing cession on the part of the Choctaw Nation, and in part satisfaction for the same, the commissioners of the United States, in behalf of the said States, do hereby cede to said nation a tract of country west of the Mississippi River, situate between the Arkansas and Red River, and bounded as follows: Beginning on the Arkansas River where the lower boundary line of the Cherokees strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River three miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning."

"ARTICLE IV. The boundaries hereby established between the Choctaw Indians and the United States, on this side of the Mississippi River, shall remain without alteration until the period at which said nation shall become so civilized and enlighted as to be made citizens of the United States, and Congress shall lay off a limited parcel of land for the benefit of each family or individual in the nation."

"ARTICLE IX. All those who have separate settlements, and fall within

the limits of the land ceded by the Choctaw Nation to the United States, and who desire to remain where they now reside, shall be secured in a tract or parcel of land one mile square, to include their improvements. Any one who prefers removing, if he does so within one year from the date of this treaty, shall be paid their full value, to be ascertained by two persons to be appointed by the President of the United States."

5 "ARTICLE X. As there are some who have valuable buildings on the roads and elsewhere upon the lands hereby ceded, should they remove, it is hereby further agreed by the aforesaid commissioners, in behalf of the United States, that the inconvenience of doing so shall be considered, and such allowance made as will amount to an equivalent."

FOURTH.

Your petitioner further states that under and by virtue of the terms of the treaty concluded between your petitioner and the United States, on the 20th day of January, 1825, it was agreed and provided in Article I of the said treaty as follows:

"The Choctaw Nation do hereby cede to the United States all that portion of the land ceded to them by the second article of the treaty of Doak Stand, as aforesaid, lying east of a line beginning on the Arkansas, one hundred paces east of Fort Smith, and running thence due south to Red River, it being understood that this line shall constitute and remain the permanent boundary between the United States and the Choctaws." (7 Stats. at Large, pp. 234, 235.)

The boundary line thus established was again declared by the United States to be the line by which the possessions of your petitioner should be marked in Article II of the treaty of September 27th, 1830, which provides as follows:

"The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian Fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the

6 beginning. The boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825." (7 Stats. at Large, p. 333.)

By the first article of the treaty between your petitioner and the United States, concluded June 22d, 1855, it was agreed that—

"The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country, viz: Beginning at a point on the Arkansas River, one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and running thence due south to Red River."

But your petitioner charges, and so states the fact to be, that the United States, in fixing and causing to be surveyed the said boundary line between

the lands of the United States and those of your petitioner, did not survey, fix, and establish the same in accordance with the agreements and stipulations of the said provisions of the several treaties above specified; and that the United States, in surveying and permanently establishing the said boundary line, did encroach upon and take from your petitioner a large quantity of land, to wit, 136,204.02 acres; and the said land has, by the said acts of the United States, as well as by the provisions of the act of Congress for establishing the western boundary line of the State of Arkansas, approved March 3, 1875, become a part of the public domain of the United States, without the consent of your petitioner, and in violation of those provisions of the said several treaties hereinbefore quoted; and your petitioner claims from the United States, by reason thereof, the sum of $167,896.57.

FIFTH.

Your petitioner further states that on and previous to the 27th
7 day of September, 1830, the United States induced your petitioner to make and conclude with the United States the treaty of September 27th, 1830; and your petitioner further states that in making the said treaty the Choctaw people and their chiefs and headmen were told and led to believe that it was not the lands of the Choctaws, but jurisdiction over their country that the United States desired to acquire and obtain.

SIXTH.

Your petitioner further states that in the said treaty concluded on the said 27th day of September, 1830, it was provided, among other things, as follows:

"ARTICLE III. In consideration of the provisions contained in the several articles of the treaty, the Choctaw Nation of Indians consent and hereby cede to the United States the entire country they own and possess east of the Mississippi River; and they agree to remove beyond the Mississippi River as early as practicable, and will so arrange their removal that as many as possible of their people, not exceeding one-half of their whole number, shall depart during the falls of 1831 and 1832, the residue to follow during the succeeding fall of 1833." (7 Stats. at Large, p. 333.)

And your petitioner further states that under and in pursuance of the said agreement, your petitioner, as a nation, surrendered to the United States its dominion, ownership, and possession of all the remaining lands your petitioner at that time owned in the State of Mississippi, amounting to ten million four hundred and twenty-three thousand one hundred and thirty-nine acres; and thereupon your petitioner, in compliance with the stipulations of the said treaty on its part, commenced to remove from the said lands to the lands purchased and acquired by your petitioner under
the terms of the treaty concluded between the United States and
8 your petitioner on the 17th day of October, 1820. And your petitioner further states that it complied with the requirements of said article of said treaty, and did remove from said lands within the time stipulated therein, or within a reasonable time thereafter.

SEVENTH.

You petitioner further states that the lands so as aforesaid ceded and surrendered by your petitioner to the United States under the provisions of the said treaty were worth at the time of the cession thereof as aforesaid the sum of fourteen million seven hundred and eighty-one thousand six hundred and sixty-one dollars ($14,781,661); and your petitioner states that it ought, in equity and justice, to have received that amount for the said lands at that time, but your petitioner states that the United States did not pay to your petitioner the said sum of money for the said lands, although it did undertake and agree to and with your petitioner, in consideration of the said session, to faithfully keep and observe on its part certain stipulations hereinafter stated.

EIGHTH.

Your petitioner further states that in Article XIV of the said treaty of September 27th, 1830, it was agreed and provided as follows:

"ARTICLE XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States shall be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner, shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age, and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon
9 said lands, intending to become citizens of the States, for five years after the ratification of this treaty, in that case a grant in fee-simple shall issue. Said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but, if they ever remove, are not to be entitled to any portion of the Choctaw annuity." (7 Stats. at Large, p. 335.)

And your petitioner further states that one thousand five hundred and eighty-five heads of Choctaw families signified their intention to remain on their lands in Mississippi and become citizens of the United States, as required by the terms and conditions of the above-quoted article of said treaty; and your petitioner further states that although the above specified number of "heads of Choctaw families" substantially complied with all the terms, requirements, and conditions of the said article of the said treaty, and thereby became entitled to a grant of land in fee simple, as specified in the said article, yet but one hundred and forty-three of such families ever received from the United States their title to the lands guaranteed to them by the said article of the said treaty, leaving one thousand four hundred and forty-two of the said "Choctaw heads of families" entitled to a grant of their lands in fee simple under the provisions of said Article XIV.

NINTH.

And your petitioner further states thatt he said one thousand four hundred and forty-two "Choctaw heads of families" became and were en-

titled to have and receive from the United States grants in fee simple according to the stipulations of said Article XIV, lands amounting to 1,672,760 acres; but your petitioner states that the last specified number of "Choctaw heads of families," who became and were entitled to grants in fee simple for the above-specified quantity of land, were unlawfully driven from their homes and from the lands which they had claimed, and became entitled to have granted to them in fee simple under the said Article XIV; and the United States failed and neglected to protect them, or secure to them the lands to which they became and were entitled to have granted to them in fee simple under the provisions of said article of said treaty. And your petitioner further states that, in violation of the rights of the said last specified number of "Choctaw heads of families," the United States caused to be sold the lands which they became entitled to have granted to them in fee simple under the said article, and permitted them to be ejected from the said lands, although they were entitled to remain thereon and retain their homes and improvements; and your petitioner further states that the said 1,672,760 acres of land, of which the said one thousand four hundred and forty-two "Choctaw heads of families" became and were entitled to have granted to them in fee simple, were reasonably worth at the time the same were sold and appropriated by the United States, in violation of the rights of the said last specified "Choctaw heads of families" under the said Article XIV, five dollars and a half per acre; and the value of the said lands to the said "Choctaw heads of families," at the time they became and were entitled to have the same granted to them in fee simple, was the sum of $9,200,180.

TENTH.

Your petitioner further states that the United States, having failed to secure to "each Choctaw head of a family" the reservation to which he or she became entitled under the said Article XIV, subsequently, by an act of Congress approved August 23, 1842, attempted to provide compensation for the same by the issue and delivery of certificates or scrip, which authorized those entitled to such reservations, or their assignees, to enter any of the public lands subject to entry at private sale in the States of Mississippi, Alabama, Louisiana, or Arkansas, which certificates of scrip they were required by said act to receive and accept in full satisfaction of all their claims or demands against the United States under said Article XIV; and in order to compel the relinquishment and surrender of reservations under said Article XIV the agents of the United States adopted other measures of an unjustifiable and illegal character. And your petitioner avers that the various wrongs suffered in violation of said Article XIV were substantially as follows:

I. "Each Choctaw head of a family" was allowed, under said Article XIV, six months from the ratification of the treaty to "signify his intention to the agent" to remain in Mississippi and thus secure the reservation therein provided. The treaty was proclaimed 24 February, 1831. Notice of the ratification was not sent from Washington till the 21st May, 1831, and was not given to the Choctaws till some time in June, the time allowed for signification to the agent being practically reduced from six months to less than three.

2. The efforts of heads of families to signify their "intention to the agent" were in various ways obstructed and often prevented by the agent, who frequently endeavored by threats of violence to force them to emigrate; and similar threats were made by others in the employment of the Government as emigrating agents.

3. White settlers were permitted to intrude upon the lands intended to be secured by said Article XIV, in violation of the 18th article
12 of the same treaty, which provided for their exclusion for a specified period; and said intruders were permitted to evict forcibly the Choctaw claimants from the lands to which they were entitled under said Article XIV.

4. The lands embraced in the claims of said heads of families, after having been reserved from sale or entry, by order of Congress (5 Stat., 252) were afterwards opened to pre-emption claimants (ib., 382) and subsequently to other purchasers (ib., 456).

5. 1,150 heads of families, whose claims to land under said Article XIV were afterwards ascertained and recognized by the United States, were unlawfully deprived of the same by reason of their having been sold by the United States in violation of the provisions of said Article XIV.

6. Instead of giving the said 1,150 heads of families the "grants in fee-simple" to which they were entitled under said Article XIV, certificates known as "scrip" were delivered to them authorizing the entry of an equal number of acres of any public land subject to sale at private entry in Mississippi, Louisiana, Alabama, and Arkansas, which scrip they were not permitted to receive until after they had consented to go, and did actually go, to the Indian territory west of Arkansas, where it could not be used.

7. In consequence of the withholding of said scrip from the claimants for whose benefit it was issued, until after their arrival in the Indian Territory, they could make no use of it, except by selling it at points where it was not wanted, and at prices far below its true value.

8. The price actually realized by a large number of the claimants for the scrip thus paid them in place of the lands to which they were entitled was officially estimated by the Commissioner of Indian Affairs at eleven cents an acre.

13 9. The price charged to the said claimants for the said scrip in an account prepared under the direction of the Secretary of the Interior for Congress was $1.25 per acre.

10. The sixth section of the act under which said scrip was issued for the quantity of land to which the claimant was entitled required it to be delivered "in full satisfaction and discharge of such claim." (5 Stat., 515.)

11. The third section of the same act provided as requisites to a reservation under said Article XIV:

"And that said Indian did at the date of making said treaty, to wit, on the 27th September, 1830, have and own an improvement in the then Choctaw country; and that having and owning an improvement at the place and time aforesaid, did reside upon that identical improvement or a part of it for the term of five years continuously next after the ratification of said treaty, to wit, from the 24th February, 1831, to the 24th February, 1836, unless it shall be made to appear that such improvement was before the 24th of February, 1836, disposed of by the United States, and

that the reservee was dispossessed by means of such disposition." (5th Stat., 514.)

Which requirements were in violation of the treaty, inasmuch as said Article XIV did not require the head of a family "desirous to remain and become a citizen" to have and own an improvement, nor did any part of said article require a "continuous" residence of five years upon any "improvement."

12. More than a hundred families justly entitled to land under said Article XIV were excluded from any allowance for the same under the above-recited provision of said act of 1842, because they had not occupied their improvements during the full term of five years from the ratification of the treaty, although it was shown that they had been driven from them by white settlers.

14 ELEVENTH.

Your petitioner further states that 292 of the 1,442 Choctaw heads of families entitled to grants in fee-simple under Article XIV of the Treaty of 1830, as set forth in Article ninth of this petition, have never received any such grants in fee-simple, or any allowance or compensation whatever for the same; and that the claims of 1,150 of said 1,442 heads of families were adjudicated and allowed under the act aforesaid of 23d August, 1842, and certificates or scrip awarded to them under the provisions of said act authorizing the entry of 1,399,920 acres of land, of which there were paid and delivered to the persons entitled to receive the same 3,833 certificates, or pieces of scrip, authorizing the entry of 700,080 acres of land. The certificates for the residue of said 1,399,920 acres, to wit, for 699,840 acres, were not issued, but were withheld under an act approved March 3, 1845, which provided that they should carry an interest of five per cent., payable to the claimants or their representatives, to be estimated upon one dollar and twenty-five cents for each acre of land to which they were entitled, (5 Stat., 777). The aggregate amount or principal sum thus funded, amounting to $872,000, was afterwards, under an act approved July 21, 1852, paid in money to the claimants, which sum of $872,000 was included in the sum of $1,749,900 subsequently charged to the claimants in an account hereinafter set forth in this petition, being for 1,399,920 acres of scrip, in lieu of reservations, at $1.25 per acre, of which sum of $1,749,900, $872,000 was paid, as aforesaid, in money, the residue of $877,900 being charged in said account for the certificates or scrip authorizing
15 the entry of 700,080 acres of land, delivered as aforesaid to the said claimants, for which 700,080 acres in scrip the said claimants were charged at the rate of $1.25 per acre, although, by reason of the acts of the United States and its agents, as hereinbefore set forth, in delivering said scrip at places where it could not be used, the whole amount realized by the claimants for said scrip was $118,400, and no more; which, together with the sum of $872,000, paid as aforesaid under said act of July 21, 1852, making together the sum of $980,400, was all that should have been charged to said claimants on account of said scrip, and is all that should be deducted from the sum of $9,200,180, the value of the lands of which they were unjustly deprived, as hereinbefore set forth in Article ninth, and which they ought to recover in this proceeding, unless they are estopped by the stipulations hereinafter set forth.

TWELFTH.

Your petitioner further states that Article XV of the said treaty provides, amongst other things, as follows:

"If the nation shall think proper to elect an additional principal chief of the whole to superintend and govern upon republican principles, he shall receive annually for his services five hundred dollars, which allowance to the chiefs shall continue for twenty years."

And your petitioner states that although the Choctaw Nation has established a republican form of government, and elected one principal chief, as required by the said Article XV of the said treaty, yet the United States did not pay to your petitioner the said sum of five hundred dollars per annum for the period of twenty years, as provided in the said article
16 of said treaty, and your petitioner claims from the United States, by reason thereof, the sum of ten thousand dollars ($10,000).

THIRTEENTH.

Your petitioner further states that, by the terms of the sixteenth article of the said treaty, the United States agreed, at its own expense, to remove the Choctaw people to their new homes, and to furnish them with ample corn, beef, and pork for themselves and families for the period of twelve months after reaching their new homes; and also that the United States would take all the cattle of the Choctaw people at the valuation of some discreet person, to be appointed by the President, and that the same should be paid for in money after their arrival at their new homes; but your petitioner states that between the years 1834 and 1846 nine hundred and sixty individual members of the Choctaw Nation emigrated at their own expense, and subsisted themselves at their new homes for one year, without assistance from the United States; and your petitioner states that the Choctaw Nation is entitled to demand and recover from the United States the sum of $54.16½ for each one of the said individual members of the Choctaw Nation who so removed and subsisted themselves at their own expense; and your petitioner claims, by reason thereof, the sum of $51,998.40.

FOURTEENTH.

Your petitioner further states that Article XIX of the said treaty of September 27th, 1830, contained among others the following provisions:

"ARTICLE XIX. The following reservations of land are hereby admitted: To Col. David Folsom, four sections, of which two shall include his present improvement, and two may be located elsewhere, on unoccupied, unimproved land.

17 "To I. Garland, Col. Robert Cole, Tuppanahomer, John Pitchlynn, Charles Juzan, Johoke-betubbe, Eaychahobia, Ofehoma, two sections each, to include their improvements, and to be bounded by sectional lines, and the same may be disposed of and sold, with the consent of the President; and that others not provided for, may be provided for, there shall be reserved as follows:

"First. One section to each head of a family, not exceeding forty in number, who during the present year may have had in actual cultivation, with a dwelling-house thereon, fifty acres or more.

"Second. Three quarter-sections, after the manner aforesaid, to each head of a family, not exceeding four hundred and sixty, as shall have cul-

tivated thirty acres, and less than fifty, to be bounded by quarter-section lines of survey, and to be contiguous and adjoining.

"Third. One half-section, as aforesaid, to those who shall have cultivated from twenty to thirty acres, the number not to exceed four hundred.

"Fourth. A quarter-section, as aforesaid, to such as shall have cultivated from twelve to twenty acres, the number not to exceed three hundred and fifty; and one-half that quantity to such as shall have cultivated from two to twelve acres, the number also not to exceed three hundred and fifty persons. Each of said class of cases shall be subject to the limitations contained in the first class, and shall be so located as to include that part of the improvement which contains the dwelling-house. If a greater number shall be found to be entitled to reservations under the several classes of this article than is stipulated for under the limitation prescribed, then, and in that case, the chiefs, separately or together, shall determine the persons who shall be excluded in the respective districts.

* * * * * * *

"The several reservations secured under this article may be sold with the consent of the President of the United States, but should any prefer it, or omit to take a reservation for the quantity he may be entitled to, the United States will, on his removing, pay fifty cents an acre, after reaching their new homes, provided that before the first of January next they shall adduce to the agent or some other authorized person to be appoin'ed, proof of his claim, and the quantity of it." (7 Stats. at Large, pp. 336, 337.

18 Your petitioner further states that all the individuals named in said Article XIX, as above set forth, secured the reservations provided for them, with the exception of Johoke-be-tubbee, whose reservation of two sections of land in the second paragraph of said article was never located or in any way secured or paid for.

Your petitioner further states that the spirit of said article and its intention to provide reservations for the cultivators of the soil were violated in this: That whereas the said Article XIX intended to provide 458,400 acres for 1,600 cultivators, but in carrying out the treaty land was assigned to only 731 of the number embraced in the 1,600, and the whole amount of land assigned to those 731 cultivators was 123,680 acres, a falling off of 334,720 acres in the quantity set apart by the said Article XIX for that purpose, as will more fully appear in the following statement:

Said Article XIX provided in the—

1st class, 25,600 acres for 40 cultivators;
2d class, 220,800 acres for 460 cultivators;
3d class, 128,000 acres for 400 cultivators;
4th class, 56,000 acres for 350 cultivators;

In all four, 430,400 acres for 1,250 cultivators.

In carrying out Article XIX the Government agents assigned—

10,880 acres to 17 cultivators in the 1st class;
22,080 acres to 46 cultivators in the 2d class;
23,680 acres to 74 cultivators in the 3d class;
39,040 acres to 294 cultivators in the 4th class;

95,680 acres to 381 cultivators in all four classes.

For the 350 cultivators of the 5th class the full amount of 28,000 acres, to which they were entitled under said Article XIX, was assigned. But your petitioner avers that the actual number of cultivators having from two to twelve acres in cultivation at the date of the treaty, as contemplated in said article, was 1,763, instead of 350, and that 1,413 of those who had in cultivation from two to twelve acres failed in consequence of the limitations of said Article XIX to get any land at all, and that while the treaty evidently intended to provide reservations for 1,600 cultivators, such reservations were assigned to only 731, although the number of actual cultivators was 2,144.

And your petitioner further states that the 1,413 cultivators who, owing to the wording of the treaty, were thus excluded from its benefits, did at the time contend, and have since contended, that they were justly entitled to the same measure of compensation for their improvements as was allowed to other cultivators of the same grade, to wit, eighty acres of land for each cultivator, equal in all to 113,040 acres, reasonably worth to them at that time the sum of $339,120.

And your petitioner further states that of the 731 cultivators, to whom were assigned lands as aforesaid under said Article XIX, 143 have never received any land or other benefits intended to be secured by said article, of which number 45 cultivators, entitled to 6,400 acres, relinquished the same to the United States under said article, but never received any compensation for the same; and 98 of said 143 cultivators, to whom 15,520 acres of land were assigned, never had any land located or set apart for them, the whole amount to which said 143 cultivators were entitled being 21,920 acres, worth at the time the sum of $65,760; for which sum, and for $3,840, the value of the two sections reserved for Johoke-be-tubbee as aforesaid, and for the sum of $339,120 hereinabove set forth, making in all $408,720, your petitioner prays judgment, unless the claim for the same is concluded and estopped by the proceedings hereinafter set forth.

FIFTEENTH.

Your petitioner further states that it was provided in Article XX of the said treaty amongst others things, as follows:

"To each warrior who emigrates, a rifle, moulds, and ammunition."

But your petitioner states that there were a large number of warriors who removed from the State of Mississippi, between the years 1834 and 1855, who never received from the United States any of the benefits of the said article of said treaty; and that the number of such persons who became and were entitled to the benefits of the provision of the said Article XX was one thousand four hundred and fifty-eight, and they demanded from the United States the articles agreed to be furnished under the said Article XX; and that the articles to be supplied to such warriors were reasonably worth, at that time, thirteen dollars and fifty cents to each warrior; and that the whole amount claimed by the said warriors and their descendants from the United States by reason thereof was, and is, the sum of nineteen thousand two hundred and seventy-eight dollars.

SIXTEENTH.

Your petitioner further states that under and by virtue of the first section of the act of Congress making appropriations for the expenses

21 of the Indian department, and for fulfilling treaty stipulations with the various Indian tribes for the year ending June 30th, 1846, approved March 3d, 1845, it was provided as follows:

"That of the scrip which has been awarded or shall be awarded to Choctaw Indians under the provisions of the law of 23d August, 1842, that portion thereof not deliverable East, by the third section of said law, in these words, 'not more than one-half of which shall be delivered to said Indian until his removal to the Choctaw territory west of the Mississippi,' shall not be issued or delivered in the West, but the amounts awarded for land on which they resided, but which it is impossible for the United States now to give them, shall carry an interest of five per cent., which the United States will pay annually to the reservees, under the treaty of 1830, respectively, or to their heirs and legal representatives forever, estimating the land to which they may be entitled at one dollar and twenty-five cents per acre."

And your petitioner further states that the whole number of acres of land for which the "Choctaw heads of families," and their children, became and were entitled to receive scrip, under the provisions of the act of Congress approved August 23d, 1842, and which was directed to be funded under the provisions of the above-recited act of Congress, was six hundred and ninety-seven thousand six hundred acres, and the value thereof, under the said act of Congress, was eight hundred and seventy-two thousand dollars ($872,000); and your petitioner further states that the said Choctaw heads of families, their heirs and legal representatives, for whose use and benefit the said scrip was funded, became and were entitled to be paid, and to receive interest thereon, from the date of the passage of the said act of Congress, to wit, from the said 3d day of March, A. D. 1845; but your petitioner states that the United States refused to allow or pay any interest on the said funded scrip from the said 3d day of March, 1845, unless those persons who were entitled to receive the same, or his or

22 her heirs and legal representatives, was at the date of the passage of the said act settled in the Choctaw territory west of the Mississippi river; and the United States also refused to allow or pay any interest on the said funded scrip, if the said scrip was issued subsequent to the date of the said act of March 3d, 1845, until the person or persons for whose benefit the same was issued and funded, or his or her heirs and legal representatives, had in fact removed from the State of Mississippi to the Choctaw territory; and your petitioner further states that those persons for whose use and benefit the said scrip was funded, or their heirs and legal representatives, were entitled to be paid the interest on the said funded scrip from the said 3d day of March, 1845, when the same was authorized to be funded, until the 21st day of July, A. D. 1852, the date of the passage of the act of Congress, under and by virtue of which the same was redeemed by the United States by the payment of the principal thereof to those persons for whose use and benefit the same was issued, or to their heirs or legal representatives; and your petitioner avers that the United States did not pay the interest on the said funded scrip between the said dates, but only paid the same in the manner, upon the conditions, and at the times hereinbefore stated; and your petitioner further states that the amount of interest that became due and payable from the United States, for and on account of the said funded scrip, between the dates aforesaid,

was the sum of three hundred and five thousand five hundred and fifty-one dollars ($305,551); and your petitioner avers that between the above specified dates the United States paid as interest, for and on account of the said funded scrip, to the persons entitled to the same, or to their heirs or legal representatives, the sum of one hundred and seventy-one thousand four hundred dollars and thirty-four cents ($171,400.34), and no more; and that on the 21st day of July, 1852, there remained due and payable to those individual members of the Choctaw Nation, for whose use
23 and benefit the said scrip was funded, or to their heirs and legal representatives, the sum of one hundred and thirty-four thousand one hundred and fifty dollars and sixty-six cents ($134,150.66) for interest due and payable upon the said scrip, so as aforesaid funded under the provisions of the said act of Congress approved March 3d, 1845. And your petitioner claims the said sum if the court, upon the hearing of this cause, shall assume and determine that, under the provisions of the act by which it acquires jurisdiction of this cause, it may rightfully examine "questions of difference" existing between your petitioner and the United States "de novo," and shall not consider the award made by the Senate of the United States in favor of your petitioner, in manner and form as herein set forth as final and conclusive against both your petitioner and the United States.

SEVENTEENTH.

Your petitioner further avers that in and by Article IV of the treaty of October 18th, 1820, your petitioner was secured in the right to have, use, occupy and enjoy forever the lands which your petitioner retained east of the Mississippi River, after the cession of those lands embraced within the boundaries specified in Article I of the said treaty. And your petitioner further avers that by the said Article IV the said lands were, by the United States, to be partitioned and set apart to each family or individual member of the Choctaw Nation, "when said nation shall become so civilized and enlightened as to be made citizens of the United States." And your petitioner further avers that by Article VII of the treaty of January 20th, 1825, it was provided as follows:

"ARTICLE VII. It is further agreed that the fourth article of the treaty aforesaid shall be so modified as that the Congress of the United States shall not exercise the power of apportioning the lands for the benefit
24 of each family or individual of the Choctaw Nation, and of bringing them under the laws of the United States, but with the consent of the Choctaw Nation." (7 Stats. at Large, p. 236.)

And your petitioner further avers that the legal effect of the provisions of the said Article IV, of the treaty of October 18th, 1820, and Article VII, of the treaty of January 20th, 1825, was to secure to the said Choctaw families and individual members of the Choctaw Nation a title in fee-simple of all the lands belonging to the Choctaw Nation not included in the cession made by the treaty of October 18th, 1820; and that the United States was bound by its treaty stipulations, with your petitioner, to protect them, the said families and individual members of the Choctaw Nation, in their right to perpetually have, use, occupy, and enjoy the said lands under the said title.

And your petitioner further avers that the United States having, by

means of the treaty of September 27th, 1830, disregarded the obligations of the said Article IV, of the treaty of October 18th, 1820, and the said Article VII, of the treaty of January 20th, 1825; and having paid for the lands ceded by your petitioner under the treaty of September 27th, 1830, in the manner hereinbefore stated and set forth, an inadequate consideration, your petitioner claimed both before and subsequent to the making of the treaty of June 22d, 1855, that the Choctaw Nation was, in law, equity, and justice, entitled to be paid by, and to receive from, the United States the whole amount of the net proceeds resulting from the sale of the lands ceded by your petitioner to the United States under the said treaty of September 27th, 1830; and said claim, so made and asserted by your petitioner against the United States, was one of the differences and controversies existing between your petitioner and the United States when the treaty of June 22d, 1855, was made and concluded between the United States and your petitioner, as hereinafter stated.

EIGHTEENTH.

Your petitioner further states that the Choctaw people having determined to appoint delegates to again and more persistently bring the subject of their wrongs and just claims to the attention of the Government of the United States, in pursuance of such determination the Choctaw Nation, by its legislative assembly, on the 9th day of November, 1853, enacted a statute which recited and provided as follows:

"*Resolutions creating a delegation to settle all unsettled business with the Government of the United States.*

"Whereas the Choctaws were and ever have been dissatisfied with the manner in which the treaty of Dancing Rabbit Creek was made, owing to the many circumstances which were created to force them into it, and owing to the exceedingly small and inadequate amount which was given as payment for their country; and whereas a large number of claims on the United States, arising under the 14th and 19th and other articles of the treaty of 1830, are still remaining unpaid; and whereas information has reached the council that the demands of a portion of certain claimants have become prejudiced by the unauthorized interference of white men at Washington, who, without the knowledge or consent of the claimants, pretend to be their attorneys; and whereas the claimants have repeatedly, from time to time, called on the council to assist them in procuring what is justly due them from the United States; and whereas, in the opinion of the council, a speedy and final settlement should be made with the United States of the foregoing specifiation; therefore,

"Resolved, That P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland be, and are hereby, appointed delegates, and fully empowered to represent and to institute in behalf of the Choctaw people a claim upon the United States for the pay and remuneration for the country which they ceded to the United States Government east of the Mississippi River, and protect and defend all and every right and interest of the Choctaws arising under treaty stipulations or otherwise.

"Be it further resolved, That the said delegates are hereby clothed

with full power to settle and dispose of, by treaty or otherwise, all and every claim and interest of the Choctaw people against the Government of the United States, and to adjust and bring to a final close all unsettled business of the Choctaw people with the said Government of the United States."

And your petitioner further states that, in pursuance of the authority contained in the said act of the said Choctaw Nation, the said delegation did proceed to the city of Washington and enter upon the discharge of the duties imposed upon it by the said act of the Choctaw council or legislative assembly; and your petitioner further states that by the resolution of the Choctaw council or legislative assembly, approved November 10th, 1854, the said delegates were instructed—

"To remain at Washington City and continue to press to a final settlement all claims and unsettled business of the Choctaws with said Government, * * * * and to bring to a final and satisfactory settlement all claims or demands whatsoever which the Choctaw tribe, or any member thereof, have against the Government of the United States, by treaty or otherwise."

NINETEENTH.

Your petitioner further states that, on the 22d day of June, 1855, with full knowledge of all the premises aforesaid, and of the grievances and claims aforesaid, and for the considerations hereinafter specified, the United States entered into a treaty with your petitioner of said date, in the preamble to which, it was, among other things, recited, as follows:

27 "Whereas the political connection heretofore existing between the Choctaw and the Chickasaw tribes of Indians has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a readjustment of their relations to each other and to the United States;

"And whereas the United States desire that the Choctaw Indians shall relinquish all claim to any territory west of the one hundredth degree of west longitude, and also to make provision for the permanent settlement within the Choctaw country of the Wichita, and certain other bands of Indians—for which purpose the Choctaws and Chickasaws are willing to lease, on reasonable terms, to the United States that portion of their common territory which is west of the 98th degree of west longitude; and whereas the Choctaws contend that by a just and fair construction of the treaty of September 27th, 1830, they are of right entitled to the net proceeds of the lands ceded by them to the United States under said treaty, and have proposed that the question of their right to the same, together with the whole subject-matter of their unsettled claims, whether national or individual, against the United States, arising under the various provisions of the said treaty, shall be referred to the Senate of the United States for final adjudication and adjustment."

And your petitioner further states that in order to settle, adjudicate, and adjust all of the matters of difference, claims, or demands of the Choctaw Nation, or of individual citizens of the said nation, and in order to carry out the agreement recited in the preamble of the said treaty, it was provided in Article XI thereof as follows:

"ARTICLE XI. The Government of the United States not being pre-

pared to assent to the claim set up under the treaty of September 27, 1830, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

28 "First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that a final settlement with them may be promptly effected; or

"Secondly. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and if so, how much."

And your petitioner further states that, in order to provide for a settlement of the claims of the individual members or citizens of the Choctaw Nation, upon the adjudication and adjustment of the claims by either of the two methods proposed in the said Article XI, as well as to leave no doubt as to the conclusiveness and finality of the adjudication and decision of the United States Senate upon the said questions submited to it in and by the said Article XI, it was and is provided in Article XII as follows:

"ARTICLE XII. In case the Senate shall award to the Choctaws the net proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just, the settlement and payment to be made with the advice and under the direction of the United States agent for the tribe; and so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe shall, on their requisition, be paid over to them by the United States; but should the Senate allow a gross sum in further and full satisfaction of all their

29 claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for and bound to pay all the individual claims as aforesaid, it being expressly understood that the adjudication and decision of the Senate shall be final."

TWENTIETH.

Your petitioner further states that subsequent to the ratification of the said treaty, the Senate of the United States, acting under and by virtue of Article XI of the said treaty, entered upon the examination and adjudication of the said questions submitted to it in the said article; and your petitioner further states that while the Senate of the United States was engaged in the examination and adjudication of the said claims, in order

to decide the said questions so as aforesaid submitted to it, your petitioner caused to be presented to the said Senate of the United States a statement of the claims and demands upon, as well as questions of difference between, the United States and your petitioner, growing out of treaty stipulations as herein stated, together with such evidence in support of the claims of your petitioner as was then accessible or available to your petitioner. Your petitioner further states that it furnished such statement and evidence, in order that the Senate of the United States might be enabled to give to the claims of your petitioner against the United States "a just, fair, and liberal consideration," and thereby be able to come to a just conclusion thereon.

And your petitioner further states that the Senate of the United States, having given to the claims of your petitioner careful examination and consideration, did, on the *29th* 9th day of March, 1859, come to a conclusion thereon, and decide the same, and did thereupon adopt and cause to be entered of record in its journal, its decision of the said question as aforesaid submitted to it, which record of the said decision is in the words and figures following, viz:

30 "Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians, provides that the following questions be submitted for decision to the Senate of the United States:

"First, whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or,

"Secondly, whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much:

"Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the first day of January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of $1.25 per acre; and further, that they be also allowed twelve and a half cents per acre for the residue of said lands.

"Resolved, That the Secretary of the Interior cause an account to be stated with the Choctaws, showing what amount is due them according to the above-prescribed principles of settlement, and report the same to Congress." (Senate Journal, 2d session 35th Congress, page 493.)

TWENTY-FIRST.

Your petitioner further states that the Secretary of the Interior, in obedience to the mandate and requirement of the Senate of the United States in the said decision, did cause an account to be stated between the United States and your petitioner, in some respects in conformity with

the principles of decision declared and prescribed by the United
31 States, and the said Secretary of the Interior, upon such accounting certified and declared that the United States owed and was indebted to your petitioner for and on account of the "net proceeds" of the lands ceded by the treaty of September 27, 1830, in the sum of $2,981,247.30; which account, so stated by the Secretary of the Interior, was by him transmitted to the Congress of the United States on the 8th day of June, A. D. 1860, and the same was printed, and is known and designated as House Ex. Doc. 82, 1st session 36th Congress. And so much of the said account as is material to this suit is hereto attached and marked Exhibit A, and your petitioner prays that the same may be taken as a part of this petition.

TWENTY-SECOND.

And your petitioner further avers that under and by virtue of the provisions of the said treaty of June 22, 1855, in consideration of the claims and grievances hereinbefore set forth, and in consideration of the cession and lease of about fifteen millions of acres of land as therein specified, of the value of about $2,225,000, and for other considerations therein set forth, the United States solemnly covenanted and agreed with your petitioner, amongst other things, that all the rights and claims of the said Choctaw Nation, and the individuals thereof, and all said matters in dispute should receive a "just, fair, and liberal consideration" and settlement, as provided in the eleventh article of said treaty.

And your petitioner avers and charges that the said Choctaw Nation, and the individuals thereof, became and now are entitled, in virtue of said covenant and of said valuable consideration paid therefor, to have settlement and payment of and for all their said then pending rights, claims,
demands, and grievances, both individual and national, and to have
32 them adjusted, settled, and paid upon principles "just, fair, and liberal," and freed from any and all estoppels, bars, waivers, or other defenses which the defendant theretofore might in law or equity have set up or interposed against your petitioner, in virtue of any treaty, act of Congress, or thing done by your petitioner, or any individual of the nation, thereunder—which defenses would have been either unjust, unfair, inequitable, or illiberal.

And your petitioner further avers and charges that if your petitioner, by electing to bring this suit under the above-named act of Congress, ought in equity to be held to have waived the finality and conclusiveness of the award of the Senate herein named (which petitioner expressly denies), yet your petitioner has not, by bringing this suit under said act, or otherwise, waived the right aforesaid, secured by said covenant in Article XI, to demand that this court shall, in this action, and as substituted in the place of the Senate, adjust and by its decree secure to your petitioner the payment of said claims and demands, freed from all defences which the defendant, but for the said covenant, might have set up, and which defences are not warranted in equity as being a liberal and just settlement with your petitioner, taking into consideration all rights and equities growing out of all the dealings of the United States, as in this petition set forth, with said Choctaw Nation and the individuals thereof.

And your petitioner further charges and avers that, in virtue of said covenant in said Article XI in said treaty of 22d of June, 1855, and of said

consideration paid to the United States therefor, your petitioner became, and now is, entitled in this action to have and demand from this court, should it refuse to treat said award of the Senate as final and binding, as a rule for determining all controverted questions of law and fact which may arise in this case—the one secured by Article XVIII of said treaty
33 of 27th of September, A. D. 1830, to wit, that "whenever well-founded doubts shall arise the said treaty shall be construed most favorably towards the Choctaws."

TWENTY-THIRD.

Your petitioner prays that the said award of the Senate shall be adjudged to be final and conclusive, both upon the United States and the said Choctaws, and that the account stated by the Secretary of the Interior, as required by the resolution of the Senate of March 9th, 1859, may be restated by this court, or under its direction, in order that the balance due under said account may be determined in conformity with the principles prescribed by said award, and that the following errors may be corrected:

1st. The error in stating that the proceeds of the lands sold up to January 1st, 1859, and the residue of said lands, at 12½ cents an acre, amounted in the aggregate to $8,078,614.80. (Petition, p. 49; Brief, p. 372; Record, p. 1411.)

Whereas the true amount of said aggregate was and should have been stated in said account to be $8,413,418.61. (Brief, p. 368; Record, p. 1720.)

2d. The error in stating that the cost of survey and sale of said lands, 10,423,139.69 acres, was ten cents an acre, or $1,042,313.96. (Petition, 49; Brief, 369; Rec., 1411.)

Whereas the actual cost of said survey and sale was $256,387.74. (Brief, p. 368; Record, p. 1721.)

3d. The error in deducting from said aggregate of proceeds of lands sold the sum of $120,826.76 for amount to orphans for reservation. (Petition, p. 50; Record, p. 1412.)

Whereas the said sum of $120,826.76 was not deducted or taken
34 or drawn from or in anywise included in or connected with the aggregate fund against which it is charged in the said account. (Brief, p. 372; Record, p. 1734, 1736.)

4th. The error in deducting from said aggregate the following items:

Payments made to meet contingent expenses of commissioners appointed to adjust claims under the fourteenth article of Choctaw treaty of September 27, 1830	$51,320 79
For various expenses growing out of the location and sale of Choctaw reservations and perfecting titles to the same, including contingent expenses, such as pay of witnesses, interpreters, etc., incurred in executing the act of March 3, 1837, and subsequent acts relative to adjusting claims under the fourteenth article of the treaty of 1830	21,408 36
	$72,729 15

(Petition, p. 51; brief, 373; record, 1412.)

Neither of which items were legitimate charges as "proper expenditures and payments under said treaty," according to the true meaning of the award of the Senate.

All of which errors being corrected would show that the balance payable to your petitioner under the award of the Senate was $4,295,533.24, instead of $2,981,247.30, as erroneously stated by the Secretary of the Interior, as will more fully appear from the following statement:

Proceeds of lands sold and amount of unsold residue, at 12½ cents per acre		$8, 413, 418 61
Deductions made by the Secretary of the Interior. (Petition,* 51; record, 1412)		$5, 097, 367 50
35 From which deduct for error—		
1st. Overcharge for survey and sale, being difference between	$1, 042, 313 96	
And	256, 387 74	
	$785, 926 22	
2d. Payments to orphans improperly charged	120, 826 76	
3d. Charges for correcting errors of Government agents	72, 729 15	
Total deductions for erroneous charges		979, 482 13
Whole amount of proper charges		$4, 117, 885 37
Amount of proceeds as before stated		$8, 413, 418 61
Deduct amount of proper charges		4, 117, 885 37
Leaving a balance of		$4, 295, 533 24

Which was actually due your petitioner under the award of the Senate when the account of the Secretary of the Interior was stated, and for which your petitioner prays judgment, after deducting the $250,000 paid on account of said award, under the act of March 2d, 1861, and the further sum of $250,000 in bonds appropriated by the same act, for which separate claim is made in the twenty-fifth paragraph or article on page 38 of the petition first filed in this case, and is hereby again made with the prayer that interest may be allowed on said $250,000, originally payable in bonds, at the rate of six per cent. per annum from the 2d of March, 1861, until paid.

Which said sums of $250,000 in money already paid and of $250,000 in bonds still due and separately claimed under a different head, making together $500,000, being deducted from $4,295,533.24, the actual net proceeds, less all proper charges prior to 1861, leaves the sum of
36 $3,795,533.24, for which, with five per cent. interest from March 9, 1859, until paid, and for the $250,000 still due in bonds as aforesaid, with interest thereon at six per cent. per annum until paid, and the other sums specified in the petition and in the schedules hereinafter submitted, your petitioner prays judgment.

*NOTE.—The references to the petition in the foregoing statements of amounts all relate to Exhibit A, being the official statement reprinted at the end of this amended petition.

TWENTY-FOURTH.

And your petitioner further states that the Congress of the United States, in recognition of the binding force and obligation of the said decision and award of the Senate of the United States, in the act entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and to fulfill treaty stipulations with the various Indian tribes," for the year ending June 30, 1862, approved March 2, 1861, provided as follows:

"For payment to the Choctaw Nation or tribe of Indians on account of their claim under the eleventh and twelfth articles of the treaty with said nation or tribe, made the twenty-second of June, eighteen hundred and fifty-five, the sum of five hundred thousand dollars; two hundred and fifty thousand dollars of which sum shall be paid in money, and for the residue the Secretary of the Treasury shall cause to be issued to the proper authorities of the nation or tribe, on their requisition, bonds of the United States, authorized by law at the present session of Congress: Provided, that in the future adjustment of the claim of the Choctaws under the treaty aforesaid, the said sum shall be charged against the said Indians." (12 Statutes at Large, 238.)

And your petitioner states that under the provisions of the said statute it received from the United States the sum of $250,000, being the money payment directed to be made by the said statute; but the bonds which were required to be issued by the said statute were never issued or delivered to your petitioner.

37 TWENTY-FIFTH.

Your petitioner further states that under and by virtue of the provisions of the said act of Congress, approved March 2, 1861, it became and was entitled to demand and receive from the United States the bonds of the United States, bearing interest at the rate of six per centum per annum, for the sum of $250,000, as a payment by the United States for and on account of the said award, so as aforesaid made by the Senate of the United States.

And your petitioner further states that the issue and delivery of the said bonds to your petitioner was demanded of and from the United States by the authorized delegates and agents of your petitioner, in the month of April, A. D. 1861; but the said bonds were not at that time issued and delivered to your petitioner, nor have the said bonds ever since that tim been issued or delivered to your petitioner; nor has your petitioner ever received from the United States any payment of money in lieu of the said bonds. And your petitioner claims from the United States by virtue of the said act of Congress, for and on account of the said award of the Senate, the said sum of $250,000 with interest thereon at the rate of six per centum per annum from the date when demand was made for said bonds until paid.

TWENTY-SIXTH.

Your petitioner further states that the claims and demands of your petitioner against the United States, but for the adjudication thereof by the Senate of the United States as hereinbefore stated, would in justice and

equity amount to the sum of $8,432,349.78, and but for the adjudication and decision of the Senate of the United States, under the authority conferred by Article XI, of the said treaty of June 22, 1855, your petitioner would be entitled to recover a judgment for the said sum against the
38 United States, in this proceeding, together with interest thereon at the rate of five per centum per annum, from September 27th, 1836; and your petitioner further states that the specified claims and demands from which the said sums results, as hereinbefore stated, were and are as follows, viz:

1. Claims under Article XIV, treaty of September 27, 1830	$7,808,668 80
2. Claims under Article XV, treaty of September 27, 1830	10,000 00
3. Claims under Article XVI, treaty of September 27, 1830	51,998 40
4. Claims under Article XIX, treaty of September 27, 1830	408,720 00
5. Claims under Article XX, treaty of September 27, 1830	18,811 92
6. Claims for interest on funded scrip	134,150 66
Total	8,432,349 78

TWENTY-SEVENTH.

Your petitioner further states that there remained due and payable to your petitioner from the United States, for and on account of the said award, so as aforesaid made by the Senate of the United States, in favor of your petitioner, after deducting therefrom the sum of five hundred thousand dollars, directed to be paid by the said act of Congress approved March 2, 1861, the sum of $3,795,533.24. And your petitioner demands and claims from the United States interest at the rate of five per cent. per annum on the unpaid balance of the said award, after deducting therefrom the said sum of five hundred thousand dollars, which was paid, and to be paid, to your petitioner in the manner and form described in said act of March 2, 1861. And your petitioner states that it has a right to
39 demand from the United States interest on said unpaid balance because and for the following reason, viz:

I. Because the said adjudication and award of the Senate of the United States in favor of your petitioner, upon the questions submitted to it by Article XI of the treaty of June 22d, 1855, was an adjudication, decision, and award in its favor, having and growing out of it all of the legal rights and incidents of a final award, judgment, or decree in favor of your petitioner against the United States, rendered by a legal tribunal having exclusive jurisdiction of the questions submitted to it for decision.

II. Because the obligations of the United States to your petitioner grow out of and result from the non-fulfilment of the treaty stipulations heretofore made and entered into between the United States and your petitioner, and such obligations, and the liabilities resulting from their non-performance are always to be ascertained and determined by the public international law. And your petitioner states that, by the terms and requirements of the

public international law, the obligation to pay interest is a legal right, resulting from the neglect or failure to pay money due and payable under treaty stipulations.

III. Because it was stipulated and agreed between your petitioner and the United States in Article XIII of the said treaty of June 22d, 1855, as follows:

"And the funds now held in trust by the United States for the benefit of the Choctaws under former treaties, or otherwise, shall continue to be so held, together with the sum of five hundred thousand dollars, out of the amount payable to them under articles eighth and tenth of this agreement, and also whatever balance shall remain, if any, of the amount that shall be allowed the Choctaws by the Senate, under the twelfth article hereof, after satisfying the just liabilities of the tribe. The sums so to be held in trust shall constitute a general Choctaw fund, yielding an annual interest of not less than five per centum."

40 TWENTY-EIGHTH.

Your petitioner further states that, by Article XIV of the said treaty of June 22nd, 1855, it was provided that—

"The United States shall protect the Choctaws and Chickasaws from domestic strife, from hostile invasion, and from aggression by other Indians and white persons not subject to their jurisdiction and laws."

But your petitioner further states that the United States did not, in the year 1861, protect the Choctaw Nation from domestic strife and hostile invasion; and that by reason thereof many of the Choctaw people became, and were, engaged in the late rebellion, and that by reason of the situation of the Choctaw country, surrounded by the State of Arkansas on the east and by the State of Texas on the west and south, it became and was impossible to counteract or resist the influences brought to bear upon the Choctaw people to induce them to give to the cause of the so-called Southern Confederacy their assistance and support. And your petitioner further states that, at that time, they were without any protection from the United States, and their own sense of danger, as well as the hope of having some protection to their persons and homes, induced the Choctaw people to enter into treaty stipulations with the so-called Southern Confederacy. But your petitioner further states that, on the 15th day of September, 1865, your petitioner, by its authorized commissioners and delegates, entered into agreement with the United States, which provided as follows:

"Whereas the aforesaid nations and tribes or bands of Indians, or portions thereof, were induced by the machinations of the emissaries of the so-called Confederate States to throw off allegiance to the Government of the United States, and to enter into treaty stipulations with the said so-called Confederate States, whereby they have made themselves liable to a forfeiture of all rights, of every kind,
41 character, and description, which had been promised and guaranteed to them by the United States; and whereas the Government of the United States has maintained its supremacy and authority within its limits; and whereas it is the desire of the Government to act with magnanimity with all parties deserving its clemency, and to re-establish order and legitimate authority among the Indian tribes; * * * and for

that purpose the undersigned do hereby acknowledge themselves to be under the protection of the United States of America, and covenant and agree that hereafter they will in all things recognize the Government of the United States as exercising exclusive jurisdiction over them, and will not enter into any allegiance or conventional arrangement with any State, nation, power, or sovereign whatsoever; that any treaty of alliance for cession of land, or any act heretofore done by them, or any of their people, by which they renounce their allegiance to the United States, is revoked, cancelled, and repudiated. In consideration of the foregoing stipulations made by the members of the respective nations and tribes of Indians present, the United States, through its commissioners, promises that it will reestablish peace and friendship with all the nations and tribes of Indians within the limits of the so-called Indian country; that it will afford ample protection for the security of the persons and property of the respective nations or tribes, and declares its willingness to enter into treaties to arrange and settle all questions relating to and growing out of former treaties with said nation." (Stats. at Large, p. —.)

And your petitioner further states that in pursuance of the said agreement, so made between the United States and your petitioner, there was concluded between the United States and your petitioner the treaty dated April 28th, 1866, in which said treaty it was provided, in Article X, as follows:

"ARTICLE X. The United States reaffirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion and in 42 force at that time, not inconsistent herewith, and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislation, from and after the close of the fiscal year ending on the 30th of June, in the year (1866) eighteen hundred and sixty-six. (Statutes at Large, vol. 14, p. 779.)

TWENTY-NINTH.

Your petitioner further states, that between July 1st, 1861, and July 1st, 1866, there became and was due and payable to your petitioner from the United States, under and by virtue of various treaty stipulations made between your petitioner and the United States previous to the said 1st day of July, 1861, the sum of $406,284.93, of which amount it is admitted that the United States may legally retain the sum of $346,835.61, leaving a balance due to the Choctaw Nation from the United States of $59,449.32, which sum your petitioner is entitled to recover in this proceeding in addition to the various other amounts claimed in this petition.

THIRTIETH.

Your petitioner further states, that by the award of the Senate of the United States, made as hereinbefore stated, your petitioner became and was entitled to receive the "net proceeds" of the lands ceded to the United States by your petitioner under the treaty of September 27, 1830, which had been sold on the 1st day of January, 1859, and also an allowance of 12½ cents per acre for unsold land. And your petitioner avers that the

gross receipts for said lands amounted to $7,926,917.78, and that the unsold land at 12½ cents per acre amounted to $486,500.83, making a
43 total of $8,413,418.61; and that the amount payable to your petitioner, after deducting all proper charges from said total sum, was $4,295,533.24, which amount your petitioner became entitled to demand and receive from the United States on the 9th day of March, 1859.

THIRTY-FIRST.

Your petitioner further states that the "questions of difference," which exist between your petitioner and the United States each grow out of, and result from, the non-fulfillment, of various treaty stipulations, under treaties heretofore made and concluded between your petitioner and the United States; and that such "questions of difference" relate exclusively to claims and demands which can now only be satisfied and settled by the payment to your petitioner of such sums of money as the United States ought, under and by virtue of its treaty obligations as well as upon principles of equity and justice, to pay to your petitioner; and that the money demands and claims of your petitioner against the United States, for and on account of, and to recover which this petition is filed by the Choctaw Nation, in its own behalf, and in behalf of individual members of the said nation, are now specifically stated as follows:

44 A.

Claims of your petitioner against the United States upon the basis of the Senate award and the correctness of the account stated by the Secretary of the Interior, May 8th, 1860, in obedience to the resolution of the Senate.

I.	Amount found due by the Secretary of the Interior..	$2,981,247 30
	From which deduct amount appropriated by Congress, March 2, 1861	500,000 00
	Balance remaining	$2,481,247 30
II.	Interest on said balance from March 9th, 1859, at five per cent. per annum, until paid.	
III.	Amount of bonds authorized to be issued on account of said award, March 2, 1861	250,000 00
IV.	Interest on said bonds from March 2, 1861, until paid, at six per cent. per annum.	
V.	For suspended annuities revived by treaty, 28th April, 1866	59,449 32
VI.	For lands taken from Choctaws in surveying and marking western boundary of Arkansas	167,896 57
		$2,958,593 19

To which add interest on balance due on award of the Senate, at five per cent., and on bonds authorized by Congress at six per cent., until paid.

45 B.

Amount due under award, after correcting errors in account stated by Secretary of the Interior, in obedience to the resolution of the Senate:

I. Balance due upon award of the Senate under Article XI, treaty June 22, 1855	$3,795,533 24
II. Interest on said balance at five per cent. per annum from March 9, 1859, until paid.	
III. For bonds authorized to be issued on account of said award by act of March 2, 1861	250,000 00
IV. Interest on said bonds from March 2, 1861, at six per cent. per annum, until paid.	
V. For suspended annuities revived by treaty of April 28, 1866	59,449 32
VI. For lands taken from Choctaws in surveying and marking western boundary of Arkansas	167,896 57
Aggregate	$4,272,879 13

To which add interest on balance due under award of Senate from March 9, 1859, at five per cent. per annum, and on bonds authorized by Congress from March 2, 1861, at six per cent. per annum, until paid.

46 C.

Amount that your petitioner is entitled to recover and should be allowed by this court in case it should decide that the award of the Senate, under Article XI, of the treaty of June 22, 1855, should be set aside, and ought not to be held as binding or conclusive against either the United States or your petitioner.

I. Claims under 14th article, treaty of 1830: 1,404,640 acres for which scrip was allowed. 268,120 acres for rejected claims.		
1,672,760 acres at $5.50 per acre		$9,200,180 00
From which deduct—		
Funded scrip paid in money	$872,000 00	
311,920 acres, scrip, at 11 cts.	34,311 20	
388,160 " " at $1.25	485,200 00	
		1,391,511 20
		$7,808,668 80
(See Brief, p. 235, &c., &c.)		
Interest on 14th article claims as above stated, from 24th August, 1836, at five per cent., until paid.		
II. 15th article claims		10,000 00
III. 16th article claims		51,998 40
IV. 19th article claims		408,720 00
V. 20th article claims		18,811 92

VI.	Suspended annuities.....	59,449 32
VII.	Land taken from Choctaw eastern boundary.....	167,896 57
VIII.	Interest of funded scrip.....	134,150 66
	Total.....	$8,659,695 67

With interest on 14th article claims, as above stated, for $7,808,668.80, from 24th August, 1836, until paid.

47 And your petitioner prays that in considering the questions of difference existing between your petitioner and the United States, it will plea e the court to allow your petitioner the sums of money herein claimed, in accordance with such one of the three schedules hereinbefore set forth, as most strictly conforms to the just rights and claims of your petitioner in the premises.

D.

Claims of the Choctaw Nation against the United States, stated upon the principle that the United States has, and retains the lands acquired by the treaty of September 27th, 1830, in trust for the benefit of the Choctaw Nation, and, as trustee, is bound to account for the value of said lands after deducting therefrom the amounts paid to the Choctaw Nation on account of said lands.

And your petitioner further prays that if neither of the above methods of stating the claims and demands of your petitioner against the United States, on account of the "questions of difference," existing between your petitioner and the United States, seem to be such as the court can approve and sanction by its judgment; and, if the court shall consider that it may rightfully ignore the said award of the Senate of the United States in favor of your petitioner, as final and conclusive against the United States, and shall assume the right to examine the said "questions of difference" de novo, then your petitioner prays that it will please the court to consider the United States as having required your petitioner, in violation of the covenants contained in the treaty of October 18th, 1820, and January 20th, 1825, to cede and convey to the United States the lands described in the said treaty of September 27th, 1830; and that the
48 court shall declare that the United States, from and after the date of said treaty of September 27th, 1830, held the said lands as trustee for the benefit of your petitioner, and was bound to account to your petitioner for the proceeds resulting from the sale thereof; that the court shall ascertain by such evidence as may be available for that purpose, the amount realized from the sale of said lands by the United States; and that the court, having ascertained the amount received by the United States from the sale thereof, shall cause an account to be stated between your petitioner and the United States in respect to the said lands; and shall ascertain and charge against the same the fair and reasonable value of all property, money, scrip, or other thing of value paid to and received by your petitioner for or on account of said lands from the United States; and that upon such accounting, a judgment may

be rendered herein for such balance as may be thus found to be due and owing to your petitioner by the United States for and on account of the land ceded by your petitioner to the United States, under the said treaty of September 27th, 1830; and that interest be awarded upon the said balance so found to be due and owing to your petitioner, as upon and for moneys belonging to your petitioner, held in trust by the United States; and that besides the said sum thus ascertained, your petitioner also have judgment against the United States for the amount of the annuities due and payable to your petitioner from July 1st, 1861, to July 1st, 1866, amounting to the sum of $59,449.32, and also for the further sum of $167,896.57, being the amount due, as the reasonable value of the lands taken from the Choctaw Nation appropriated by the United States, in surveying and marking the western boundary line of the State of Arkansas; your petitioner thus prays, in order that "all the questions of difference" heretofore and now existing between your petitioner and the United States, may be judicially determined, and the claims and demands of your
49 petitioner against the United States, may be finally adjusted and settled upon those principles of settlement which are everywhere and always recognized to be equitable and just.

JOHN B. LUCE,
Attorney for Petitioner.

SHELLABARGER & WILSON,
J. W. DENVER,
JOHN J. WEED,
F. P. CUPPY,
Of Counsel.

50 *Exhibit A.*

(Hereinbefore referred to in the Twenty-first and in other articles of the petition.)

Statement of account with the Choctaw Indians, in conformity with the resolutions and decisions of the Senate of the United States of March 29, 1859.

	Acres.	
Total area of lands ceded by the Choctaws by the treaty of September 27th, 1830	10,423,139.69	
Area of reservations "allowed and secured," which are to be deducted and excluded from computation in the account	334,101.02	
Leaving	10,089,038.67	
Quantity sold up to January 1, 1859	5,912,664.63	
Residue of said lands	5,176,374.04	

Of this residue, 2,292,266 acres have been disposed of under the swamp-land act, and grants for railroads and school purposes, up to January 1, 1859.

The proceeds of the sales of the lands up to January 1, 1859, viz, 5,912,764.63 acres, amounted to		$7,556,578 05
The residue of said lands, viz, 4,176,374.04 acres, at 12½ cents per acre, amounted to		522,046 75
		8,078,614 80

From which sum the following deductions are to be made:

1st. The cost of the survey and sale of the lands, viz, 10,423,139.96 acres, at 10 cents per acre $1,042,313 96

2d. Payments and expenditures under the treaty, which are as follows:

FIFTEENTH ARTICLE.

Salaries of chiefs for twenty years	$12,921 25	
Pay to speaker of three districts for four years	354 66	
Pay for secretary for same period	550 00	
Outfit and swords to captains, ninety-nine in number	4,930 56	
Pay to the same, at $50 per year, for four years	19,604 65	
		$38,361 12

Carried forward	$8,078,614 80
51 Brought forward	$8,078,614 80

SIXTEENTH ARTICLE.

Removal and subsistence, per statement of Second Auditor	$813,927 07	
On same account, per additional statement made in this office for expenditures from 1838 to date	401,556 17	
Amount paid for cattle	14,283 28	
		$1,229,766 52

SEVENTEENTH ARTICLE.

Annuity of $20,000 for twenty years	$400,000 00

NINETEENTH ARTICLE.

Fifty cents per acre for reservations relinquished	$24,840 00	
Amounts to orphans for reservations	120,826 76	
		$145,666 76

TWENTIETH ARTICLE.

Education of forty youths for 20 years	$217,260 73	
Council-house, house for each chief, and church for each district	9,446 75	
$2,500 annually for support of three teachers for 20 years	50,000 00	
Three blacksmiths, sixteen years	38,988 86	
Millwright for five years	3,050 00	
2,100 blankets	7,496 70	
Rifles, molds, &c., to each emigrating warrior	43,969 31	
1,000 axes, plows, hoes, wheels, and cards	11,490 20	
400 looms	7,193 53	
One ton iron and two hundred-weight of steel, annuity to each district for sixteen years	8,051 15	
		$396,947 26

TWENTY-FIRST ARTICLE.

Annuity to Wayne warriors		$1,818 76
3d. Scrip allowed in lieu of reservations, viz., 1,399,920 acres, at $1.25 per acre		1,749,900 00
Payments made to meet the contingent expenses of the commissioners appointed to adjust claims under		
52 Brought forward		$8,078,614 80
the 14th article of the Choctaw treaty of 27th September, 1830		51,320 79

For various expenses growing out of the location and sale of Choctaw reservations, and perfecting titles to the same, including contingent expenses, such as pay of witnesses, interpreters, &c., incurred in executing the act of 3d March, 1837, and subsequent acts relative to adjusting claims under the fourth article of the treaty of 18[illegible]	21,408 36	
For payments made for Choctaw account, being for expenses incurred in locating reservations under the treaty with said tribe of 27th September 1830	19,864 00	
Total amount of charges	5,097,367 50	
When deducted from the proceeds of the land sold, and the "residue of said lands," at 12½ cents per acre		5,097,368 50
Leave a balance due to Choctaws of		$2,981,247 30

OFFICE OF INDIAN AFFAIRS, *March* 22, 1860.

STATE OF ARKANSAS,
County of Sebastian, ss:

Peter Folsom, being duly sworn, on his oath states that he is the only legally appointed delegate of the Choctaw Nation authorized and empowered to represent and present to the Government of the United States the claims and demands of the Choctaw Nation against the United States; that the authority of affiant as such delegate was derived from the public acts of the Legislative Assembly or National Council of the Choctaw Nation, and that the delegation of which affiant is the only surviving member was authorized and appointed under and by virtue of a resolution of the National Council entitled "Resolutions creating a delegation to settle all unsettled business with the Government at Washington," approved November 9, 1863, which provided as follows:

53 "Whereas information has reached the council that the demands of a portion of certain claimants have become prejudiced by the unauthorized interference of white men at Washington, who, without the knowledge or consent of the claimants, pretend to be their attorneys; and whereas the claimants have repeatedly, from time to time, called on the council to assist them in procuring what is justly due them from the United States; and whereas in the opinion of the council a speedy and final settlement should be made with the United States of the foregoing specifications: Therefore

"Resolved, That P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland be, and are hereby, appointed delegates, and fully empowered to represent and to institute in behalf of the Choctaw people a claim upon the United States for the pay and remuneration for the country which they ceded to the United States Government east of the Mississippi River, and to protect and defend all and every right and interest of the Choctaws arising under treaty stipulation or otherwise.

"Be it further resolved, That the said delegates are hereby clothed with full power to settle and dispose of, by treaty or otherwise, all and every claim and interest of the Choctaw people against the Government of the United States, and to adjust and bring to a final close all unsettled business of the Choctaw people with the Government of the United States.

"Be it further resolved, That in case of resignation or death of any of the said delegation above mentioned, the chiefs have power to appoint any

person to fill such vacancy in his district." (Laws of Choctaw Nation, 1869, pp. 123, 124, 125.)

Affiant further states that by an act of the general council of the said Choctaw Nation, approved November 10, 1854, it was provided that the said delegates

"Be, and they are hereby, instructed to remain at Washington City, and continue to press to final settlement all claims and unsettled business of the Choctaws with said Government, with full power to take all measures and to enter into all contracts which, in their judgment, may
54 become necessary and proper, in the name of the Choctaw people, and to bring to a final and satisfactory adjustment and settlement all claims or demands whatsoever which the Choctaw tribe, or any member thereof, have against the Government of the United States, by treaty or otherwise." (Laws of Choctaw Nation, p. 134.)

That by the resolution of the general council of the Choctaw Nation, approved November 4, 1857, the said delegates were further authorized and empowered as follows:

"That the delegates of the Choctaw Nation, who have in charge the business and interests of the Nation, arising under the treaty of Washington, of June 22, 1855, now pending, unsettled, before the United States Government, be instructed to proceed to Washington as soon as practicable; and full power is given them, or any of them, to urge a speedy conclusion of all matters of unsettled business arising under the treaty aforesaid, and make due report of any progress or final conclusion thereof to the general council." (Laws of Choctaw Nation, p. 162.)

Affiant further states that Dixon W. Lewis, one of the delegates named in the said resolution approved November 9, 1853, having deceased, affiant was, by legal and competent authority, appointed a member of the said delegation, to fill the vacancy therein caused by the death of the said Dixon W. Lewis.

Affiant further states that in an act of the general council of the Choctaw Nation, approved November 18, 1867, it was provided as follows:

"SEC. 1. That the delegates, composed of P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom, are hereby notified that inasmuch as they have nearly consummated the 'net-proceeds question,' they shall proceed, without delay, to Washington City for the express purpose of bringing the subject-matter of these resolutions to the notice of
55 Congress, and to respectfully ask an early appropriation to be made to carry into effect the amount due this nation, as stated in the foregoing preamble of these resolutions.

"SEC. 3. Be it further resolved, That it is hereby declared to be the intention of the Choctaw Nation that the terms of service of the delegates herein mentioned shall expire whenever the whole amount of the 'net-proceeds question' is adjusted and settled by Congress, and said delegates are required to render a full and just report of their proceedings and progress they are making with the claim, from time to time, to the principal chief of this nation." (Laws of Choctaw Nation, pp. 473, 474.)

Affiant further states that since the passage of the said act three of the delegates named therein, viz, P. P. Pitchlynn, Israel Folsom, and Samuel Garland, have deceased; and no successors to them having been appointed, affiant is the only surviving member of the said delegation authorized to

represent the Choctaw Nation, in respect to the matters and things to which the said several acts of the general council of the Choctaw Nation referred.

Affiant further states that as a part of the official duty imposed upon him by the said several acts of the general council of the Choctaw Nation, he makes oath to the foregoing petition for and on behalf of the Choctaw Nation; that he has read the foregoing petition, and knows the contents thereof; and that he believes the matters and things therein stated and set forth are substantially true and in accordance with facts which he understands to be a part of the history of the Choctaw Nation in its treaty relations with the United States. Affiant further states that no assignment of the claim stated in the said petition, nor of any part thereof, or interest therein, has been made; and that the Choctaw Nation of Indians is entitled to recover the amount claimed in the foregoing petition from the United States, after allowing all just credits, set-offs, or counter-claims.

PETER FOLSOM,
Delegate of Choctaw Nation.

56 Subscribed and sworn to before me this 20th day of February, A. D. 1884.

J. L. HENDRICK,
U. S. Commissioner for the Western District of Arkansas.

UNITED STATES OF AMERICA,
Western District of Arkansas:

I hereby certify that J. L. Hendrick is, and was at the date of signing the foregoing jurat, a duly appointed and acting U. S. commissioner for the western district of Arkansas.

Witness my hand and seal of said court this 22d day of February. A. D. 1884.

[SEAL.] STEPHEN WHEELER,
Clerk U. S. District Court, Western District of Arkansas.
By S. A. WILLIAMS, *D. C.*

Post-office address of Choctaw Delegate: Oak Lodge, Choctaw Nation, Indian Territory.

Post-office address of attorney: 1213 F street, Washington, D. C.

Post-office address of counsel: Washington, D. C.

Filed as a substitute for all former petitions, February 26, 1884.

J. R.

57 III.—*Demurrer to amended petition, filed Feb'y* 26, 1884.

And now comes the Attorney-General, and says that as to so much of the amended petition of the claimants as sets forth an alleged cause of action against the defendants, based upon a certain alleged award of the Senate of the United States (referring especially to articles eighteen, nineteen, twenty, twenty-one, twenty-three, and twenty-seven, and Schedules A and B, of article thirty-one of the said amended petition), the same does not allege facts sufficient to constitute a cause of action.

THOMAS SIMONS,
Assistant Attorney-General.

58 IV.—*Demurrer overruled.*

At a Court of Claims held in the city of Washington on the third day of March, A. D. 1884,

Judge Richardson read the opinion of the court, and it was ordered that the demurrer of the defendants heretofore filed be overruled.

59 V.—*Opinion on demurrer.*

RICHARDSON, J., delivered the opinion of the court.

On the 3d day of March, 1881, Congress passed the following act:

CHAP. 139. AN ACT for the ascertainment of the amount due the Choctaw Nation.

Whereas the Choctaw Nation, for itself and in behalf of individual members thereof, makes claim against the United States on account of various treaty provisions which, it is alleged, have not been complied with: Therefore,

Be it enacted, &c., That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon;

Power is hereby granted the said court to review the entire question of differences de novo, and shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of eighteen hundred and fifty-five;

And the Attorney-General is hereby directed to appear in behalf of the Government; and if said court shall decide against the United States, the Attorney-General shall, within thirty days from the rendition of judgment, appeal the cause to the Supreme Court of the United States; and from any judgment that may be rendered the said Choctaw Nation may also appeal to said Supreme Court:

Provided, The appeal of said Choctaw Nation shall be taken within sixty days after the rendition of said judgment, and the said courts shall give such cause precedence.

SEC. 2. Said action shall be commenced by a petition stating the facts on which said nation claims to recover and the amount of its claim; and said petition may be verified by either of the authorized delegates of said nation as to the existence of such facts, and no other statements need be contained in said petition or verification. (1 Supplement to Rev. Stat., 608.)

On the 26th day of February, 1884, the Choctaw Nation filed their petition anew (as a substitute for former petitions), containing thirty-one articles, in which they state in full the facts on which they claim to recover, including the action of the Senate in relation to the treaties involved in the case. Among other matters set out in the petition are the following extracts from a treaty made between them and the United States June 22, 1855 (11 Stat. L., 611):

"Preamble. * * * And whereas the United States desire that the Choctaw Indians shall relinquish all claim to any territory west of the one hundredth degree of west longitude, and also to make provision for the permanent settlement within the Choctaw country of the Wichita, and cer-

tain other tribes or bands of Indians—for which purpose the Choctaws and Chickasaws are willing to lease, on reasonable terms, to the United States that portion of their common territory which is west of the 98th degree of west longitude;

"And whereas the Choctaws contend that by a just and fair construction of the treaty of September the 27th, 1830, they are of right entitled to the net proceeds of the lands ceded by them to the United States under said treaty, and have proposed that the question of their right to the same, together with the whole subject-matter of their unsettled claims, whether national or individual, against the United States, arising under the various provisions of said treaty, shall be referred to the Senate of the United States for final adjudication and adjustment. * * *

"ARTICLE 11. The Government of the United States not being prepared to assent to the claim set up under the treaty of September the 27th, 1830, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

"First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the lands ceded by them to the United States by the treaty of September the 27th, 1830, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that a final settlement with them may be promptly effected; or,

"Second. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and if so, how much.

"ARTICLE 12. In case the Senate shall award to the Choctaws the net proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just, the settlement and payment to be made with the advice and under the direction of the United States agent for the tribe;

"And so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe, shall on their requisition be paid over to them by the United States;

"But should the Senate allow a gross sum in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for and bound to pay all the individual claims as aforesaid.

"It being expressly understood that the adjudication and decision of the Senate shall be final."

The petition then alleges that the Senate of the United States, having given to the claims careful examination and consideration, did on the 29th day of March, 1859, come to a conclusion thereon, and decide the same,

and did thereupon adopt and cause to be entered of record in its journal, its decision of the said question as aforesaid submitted to it, as follows:

"Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians, provides that the following questions be submitted for decision to the Senate of the United States:

"First, whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September the 27th, 1830, deducting therefrom the costs of their survey and sale and all just and proper expenditures and payments under the provisions of said treaty, and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or,

"Second. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much:

"Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States, on the first day of January last, deducting therefrom the costs of their survey and sale and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of $1.25 per acre; and, further, that they be also allowed twelve and a half cents per acre for the residue of said lands.

"Resolved, That the Secretary of the Interior cause an account to be stated with the Choctaws, showing what amount is due them according to the above prescribed principles of settlement, and report the same to Congress."

The petition further alleges "that the Secretary of the Interior, in obedience to the mandate and requirement of the Senate of the United States, in the said decision, did cause an account to be stated between the United States and your petitioner, in some respects in conformity with the principles of decision declared and prescribed by the Senate, and the said Secretary of the Interior, upon such accounting, certified and de-
61 clared that the United States owed and was indebted to your petitioner for and on account of the 'net proceeds' of the lands ceded by the treaty of September 27, 1830, in the sum of $2,981,247.30, which account, so stated by the Secretary of the Interior, was by him transmitted to the Congress of the United States on the 8th day of June, A. D. 1860."

The prayer of the petition, in effect, seems to be in the alternative: 1st, demanding under the action of the Senate, if that be upheld, after deducting alleged errors in the account stated by the Secretary of the Interior, $4,272,879.13; 2d, claiming as a balance due, independently of the action of the Senate, if that be not sustained, the sum of $8,659,695.67.

Schedules are annexed to the petition showing the items of which these several sums are composed.

The defendants have filed a demurrer as follows:

"And now comes the Attorney-General and says that as to so much of the amended petition of the claimant as sets forth an alleged cause of action against the defendants based upon a certain alleged award of the Senate of the United States (referring especially to articles 18, 19, 20, 21, 23, and 27, and schedules A and B of article 31, of the said amended peti-

tion), the same does not allege facts sufficient to constitute a cause of action."

The object of this demurrer, as stated at the argument, is to obtain the views of the court in relation to the force and effect to be given to the action of the Senate upon the rights and obligations of the parties, in advance of a final trial on the merits, in order to afford, to some extent, a guide in the preparation of the case on the one side and the other. We have therefore carefully considered that subject and will state the conclusions which have been reached.

By the eleventh article the treaty of June 22, 1855, it was stipulated between the parties that two questions should be submitted to the Senate for adjudication; and at the end of the twelfth article the following stipulation appears:

"It being expressly understood that the adjudication and decision of the Senate shall be final."

By resolution of March 29, 1859, above set out, the Senate decided as the first question, that—

"The Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the first day of January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of $1.25 per acre; and further, that they be also allowed twelve and a half cents per acre for the residue of said lands."

By agreement of the parties contained in the treaty, this adjudication and decision was made final, and so was and is conclusive, unless the finality and conclusiveness have been set aside by the concurrence of both parties, since neither party alone could disturb it.

In our opinion that has been done for the purposes of the present case. On the one side Congress, representing the United States, passed the act of March 3, 1881, above set out in full, giving this court jurisdiction to try all questions of difference arising out of treaty stipulations with the Choctaw Nation. Therein it is further enacted that—

"Power is hereby granted the said court to review the entire question of difference de novo, and it shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of eighteen hundred and fifty-five."

62 On the other side, the claimants, by coming into court, submitting to its jurisdiction thus conferred, and filing a petition, have assented to the terms of the act throughout.

The adjudication and decision of the Senate is, therefore, by the subsequent acts and agreement of the parties, not to be taken as final and conclusive in the trial of this case.

It does not follow, however, that the action of the Senate will be wholly without force or effect under any circumstances of the case, that it cannot be given in evidence for any purpose, and that all reference to it in the petition must be disregarded and ruled out on demurrer. The act does not so provide. The jurisdiction conferred is general to try all questions of difference arising out of the treaty stipulations. Power is then granted to the court to review the entire question of differences de novo. One of the questions of difference may be whether or not the adjudication and

decision of the Senate was warranted by the facts. To review that question we must have the action of the Senate before us. The enactment does not exclude such action from the consideration of the court, but, on the contrary, implies that it may be rightly offered in evidence. As to the effect of such action the act declares that the court shall not be estopped thereby.

Estoppel in law belongs to the branch of evidence. It precludes parties from contradicting one piece of evidence by other evidence, however conclusive the latter might be if admissible. When, therefore, Congress by its enactment removed the estoppel which sprung from the action of the Senate under the treaty stipulations, and the claimants by their petition to this court agreed thereto, it left such action open to explanation and rebuttal by any facts which might be proved on the one side and the other in the trial of all questions of difference, but it did not so blot it out of the case as to exclude it from all consideration by the court.

Either party may put in evidence that adjudication, and if not controverted it may present the principles, so far as it goes, upon which our final decision will rest, but if controverted we shall consider whatever facts and arguments may be offered in relation thereto.

Upon the second question submitted to the Senate, "Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States, and, if so, how much," no action was taken by the Senate.

The Secretary of the Interior was directed by the Senate, as appears by its second resolution, above set out, "to cause an account to be stated with the Choctaws showing what amount is due them according to the above-prescribed principles [determined as aforesaid], and report the same to Congress." The Secretary did as he was directed, but his report was never adopted by the Senate, and no further action was taken in the matter.

The account thus made up was a mere clerical computation from information supposed to be in the Interior Department, and was not binding on either party.

In the Indian appropriation act of March 2, 1861, chap. 85 (12 Stat. L., 221, 238), Congress appropriated five hundred thousand dollars, in money and bonds, for payment to the Choctaw Nation or tribe of Indians
on account of their claim under the eleventh and twelfth articles
63 of the treaty of June 22, 1855, with this proviso attached thereto:
"Provided, That in the future adjustment of the claim of the Choctaws under the treaty aforesaid the said sum shall be charged against the said Indians." This was not a ratification of anything that had been done by the Senate, but on the contrary it contemplates that there was to be a future adjustment of the claims of the Indians.

While we hold that there has been no binding award in any particular which is final and conclusive in this court, under the act of Congress we also hold, as already indicated, that the action of the Senate is properly introduced in the petition, that it may be presented at the trial as prima facie evidence, and that under some circumstances it may become an important element in the decision of the case.

With this expression of our views, which covers all the points argued, the demurrer may be overruled.

SCOFIELD, J., took no part in this decision.

64 VI.—*Special plea.*—*Filed April* 14, 1884.

Now comes the Attorney-General, by leave of the court, and for a further plea in the above-entitled cause, avers the following matter of special defense to certain of the matters alleged in the petition therein, as hereinafter set forth, to wit:

That by the fourteenth article of the treaty of September 27, 1830, recited in the eighth article of the petition, each Choctaw head of a family being desirous to remain in the existing location, in the State of Mississippi, of such person at that date and to become a citizen of the States was to be permitted to do so by signifying his intention to the agent of the United State' in said nation within six months from the ratification of the treaty, and was thereupon to be entitled to a reservation of land as therein prescribed, including his improvement or some portion of
65 it; and if he should reside upon said land, intending to become a citizen of the States, for five years after the ratification of the treaty, a grant in fee-simple of the land so reserved should issue to him.

The said treaty was ratified on February 24, 1831, by the President and Senate of the United States.

Within six months from the said last-mentioned date about one hundred Choctaw heads of families signified to William Ward, who was, during that period, the agent of the United States in said nation, their intention to remain and become citizens of the States in order to take the benefits permitted by the said fourteenth article of the treaty, and their names were entered by said agent on a register which he made of such applicants.

A considerable number of individuals of the nation removed from the ceded lands to the lands granted to the nation in the present Indian Territory in the years 1831, 1832, and 1833, but many remained.

On August 12, 1833, the ceded lands were directed by Executive proclamation to be sold on the third Monday of October following, and an agent was appointed to locate, before the sale, the reservations to be made under the treaty of the said heads of families who had signified their intention to the agent, Ward, as shown by his register. A considerable number of Choctaws not entered on the register of said Ward applied to the said locating agent for locations under the said fourteenth article, and their claims were referred to the President, who decided in May, 1834, that they could not be recognized; but as it was represented to him that the claimants had signified their intention to the agent, Ward, in
66 due time and that the agent had neglected and refused to enter their names on his register, he directed the locating agent to receive evidence of the facts alleged (which he, in February, 1835, transmitted to Congress) and to make provisional locations for such claimants, and directed also that the sale of the lands so located for such claimants should be suspended to await the action of Congress.

On March 3, 1837, Congress passed the act entitled "An act for the appointment of commissioners to adjust the claims to reservations of land under the fourteenth article of the treaty of eighteen hundred and thirty with the Choctaw Indians," chapter 39, which was amended by act of February 22, 1838, chapter 13.

Commissioners were appointed under the former act, who proceeded to consider the claims presented under said act, but who had not concluded

the task assigned by it before August 1, 1838, when their powers expired by limitation.

The matter continued to receive the consideration of Congress, and on August 23, 1842, an act was passed entitled "An act to provide for the satisfaction of claims arising under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit Creek, concluded in September, one thousand eight hundred and thirty," chapter 187, which was amended by the provisos to the first section of the act approved March 3, 1845, chapter 72.

Commissioners were appointed under this act of 1842, who also proceeded to consider the various claims presented under the said act, but who did not complete the duties prescribed to be done by them within the time limited by the act. Their authority was therefore ex-
67 tended for one year from June 17, 1844, by act of that date, chapter 105 (5 Stat., 691), and within the time so limited, to wit, on June 16, 1845, they rendered their final report to the President, as required by the said act of 1842.

Certain claims under the said fourteenth article of the said treaty which had been brought before the last mentioned board of commissioners, but which had not been decided by it, were referred by Congress, by joint resolution No. 17, approved August 3, 1846 (9 Stat., 114), to the Secretary of War, with authority to decide the same as therein provided, which authority was exercised in accordance with said provisions.

Certain other claims under the said article of said treaty which had been brought before the said several boards of commissioners and rejected by them, or recommended by them and rejected by other competent authority, or in which the scrip awarded by the last mentioned board had not been issued, were referred by Congress by the acts approved August 30, 1852, chapter 103, and March 3, 1853, chapter 104 (10 Stat., 42, 227), to the Secretary of the Interior, with authority to examine and act upon the same as therein provided, which authority was duly exercised in accordance with said provisions.

Under the said treaty, the statutes and proceedings thereunder above recited, one hundred and forty-three heads of Choctaw heads of families obtained reservations of land in the ceded territory, and after June 16, 1845, it was found by the commissioners and other authorities in said statutes provided, professing to act thereunder, that one thousand one hun-
68 dred and fifty-five other Choctaw heads of families were entitled to the benefit of the fourteenth article of the treaty (all other claims in that behalf being rejected by them); and also that the United States had disposed of the tracts of land to which such Indians would be entitled under the provisions of said fourteenth article, so that it was at the time of such finding impossible to give said Indians the quantity to which they would be severally entitled, including their improvements, as prescribed in the said act of August 23, 1842, or any part thereof, or to their children, on the adjoining lands; and the said commissioners and authorities did thereupon estimate the quantity of land to which each of said Indians would be so entitled, and did allow him or her for the same quantity of land equal to that allowed to be taken out of any public lands in the States of Mississippi, Louisiana, Alabama, and Arkansas, subject to entry at private sale.

Eleven hundred and fifty-five pieces of scrip, each representing one-half

of the last-mentioned allowance of land to the said several Choctaw heads of families, were issued by the proper authority in pursuance of the said statutes to the persons so found to be entitled thereto, and were received and accepted by them in part payment for the lands aforesaid.

The remaining eleven hundred and fifty-five half pieces of scrip were reserved as directed by the said act of March 3, 1845, and interest was paid on the value thereof, estimated at $1.25 per acre, to such of the Choctaw heads of families as were found to be entitled thereto until the payment thereof was discontinued, and the principal, amounting at said valuation to $872,000, was paid to the parties entitled (after the execution by
69 the claimant of a final release of all claims of such parties under the fourteenth article of the treaty), as required by the first section of the act approved July 21, 1852, chapter 66.

The said release was duly executed by the proper national authority of the Choctaws, and is as follows:

"Whereas by an act of Congress entitled 'An act to supply deficiencies in the appropriations for the service of the fiscal year ending the thirtieth day of June, one thousand eight hundred and fifty-two,' all payments of interest on the amounts awarded Choctaw claimants under the fourteenth article of the treaty of Dancing Rabbit Creek, for lands on which they resided but which it is impossible to give them shall cease, and that the Secretary of the Interior be directed to pay said claimants the amount of principal awarded in each case respectively, and that amount necessary for this purpose be appropriated, not exceeding eight hundred and seventy-two thousand dollars; and that the final payment and satisfaction of said award shall be first ratified and approved as a final release of all claims of such parties under the fourteenth article of said treaty, by the proper nationala uthority of the Choctaws, in such form as shall be prescribed by the Secretary of the Interior: Now, be it known that the said general council of the Choctaw Nation do hereby ratify and approve the final payment and satisfaction of said awards, agreeably to the provisions of the act aforesaid, as a final release of all claims of such parties, under the fourteenth article of said treaty.

"A. NAIL, *Speaker.*

"Nov. 6, 1852.
"Passed in the Senate.

"D. McCOY, *Pres't.*

"Approved.

"GEORGE W. HARKINS.
"GEORGE FOLSOM."

70 It was delivered to defendants (before payment of the money appropriated by said act to the parties entitled to said scrip) to obtain such payment, and is now among the records of the defendants.

And the Attorney-General further avers that by reason of the premises the claims of the said 1,155 Choctaw heads of families, made as aforesaid for lands to be reserved to them under the provisions of the said 14th article of the treaty of 1830, were fully satisfied and discharged, and that any further claim by or on behalf of the said 1,155 persons or of any other persons claiming as Choctaw heads of families in that behalf was forever barred; and he therefore prays the court that so much of the

amended petition as sets forth a cause or causes of action in behalf of the said 1,155 or of any other Choctaw heads of families for the value of lands alleged to be due them under and by virtue of the stipulations of the said fourteenth article of the said treaty of September 27, 1830 (referring particularly to articles 6 to 11, both inclusive, and Schedule C of article 31 of the said petition), be dismissed.

THOMAS SIMONS,
Assistant Attorney-General.

71 VII.—*Replication to Special Plea.—Filed April* 22, 1884.

The claimant, the Choctaw Nation, now comes, and, reserving all exceptions which could be taken to the special plea of the defendant, filed herein upon the 14th day of April, 1884, and not waiving any exceptions thereto, makes reply to such special plea, and says:

That, at and before the date of the act of Congress of the 21st of July, A. D. 1852, and before and after the 6th of November, 1852, the date of the alleged release in the said special plea set forth, the claimant, and the said heads of families, and individual Choctaws named in the said special plea, claimed, and here claim and aver as against the defendant, that the defendant, and its officers and agents, had continuously and unjustly violated the rights of the said claimant and heads of families, and individual Choctaws, as such rights were secured by said treaty, named in the said special plea, to wit, the treaty of the 27th of September, 1830; and, particularly, had violated the provisions of the fourteenth article of said treaty; and asserted that such wrongs were so great, continuous, and oppressive that the said claimant, heads of families, and individ-

72 uals of the said nation, were coerced and compelled to submit to the orders, requirements, and demands of the defendant, and of its officers and agents, in doing the acts which are in the said special plea set forth as acts done by the claimant, heads of families, and individuals, in so far as such acts, in fact, ever were by them done or submitted to; and they then and there, as against the defendant, asserted that such acts were not the voluntary acts of said claimant, or of said heads of families, or of said individuals; and they further asserted, as against the defendant and to the defendant, that the acceptance of the said scrip, and all of said payments thereof, and the giving of said alleged release, which are in said special plea set forth, were, by reason of the said wrongs, coercion, and oppression, not binding on the claimants, or on the said heads of families, or individuals of said nation.

And the said claimant and said heads of families and individuals of said nation, further asserted and claimed, then and there, that it would be and was unjust, unfair, and oppressive, on the part of the defendant, owing to the said wrongs, to set up said acts, set forth in the said special plea, as constituting a bar to the claims alleged in such special plea to be barred by said acts.

And claimant further avers that among the acts of injustice, violation of treaty, and oppression, which the claimant then and there, and up to the 22nd of June, 1855, asserted and continued to assert to and as against the defendants, its officers, and agents, and which rendered the said acts, in the

said special plea set up as a bar, not voluntary and not binding upon the defendant, were the following:

The said Choctaws asserted and contended that, by the true construction of the said treaty of the 27th of September, 1830, they of right were entitled to the net proceeds of the sales of the lands ceded by them to the United States under the said treaty, as well as the right to have
73 the reservations provided for in and by said fourteenth article of said treaty, and that of these they had been wrongfully deprived.

The claimant then and there further averred, and insisted, that the provisions of the acts of Congress in the said special plea mentioned, were unjust and in violation of treaty obligations, and ought not to be held to be binding upon the claimant, or upon the individuals of the said nation, among others, for the following reasons:

The said acts were passed by the Congress of the United States without representation of theirs in Congress, and without any agency, solicitation, or procurement moving from the claimant or any individual of the said nation; and solely upon the motion of the defendant, one of the parties to the said treaty of September 27th, 1830.

The claimant then and there further alleged, that the act of the 3rd of March, 1837, named in said special plea, in its first section (5 U. S. Stats. at Large, p. 180), and said act, in the special plea mentioned, of the 23rd of August, 1842, in section 8 (5 U. S. Stat. at Large, p. 514), in directing the commissions therein provided for, as to what families should be allowed reservations under said fourteenth article, required that the head of the family to which such reservations should be awarded should not be a white man; whereas, by the true interpretation of the said fourteenth article, every person who was the head of a Choctaw family and a member of the said nation by the laws and customs thereof became entitled to such reservation.

The claimant then and there further asserted that said acts of Congress were unjust, and violated their treaty rights, in that by the seventh section of the act of the 22d of February, 1838 (5 Stats., 211), in said plea mentioned, and by the third section of the act of the 23d of August, 1842 (5 Stats., 514), in said plea mentioned, it is, in substance, provided that no Choctaw should be entitled to reservations under the said fourteenth article, who had removed to the Choctaw country west of the Mis-
74 sissippi River; whereas, by the terms of the said fourteenth article, such persons so deprived were entitled to patents for their said reservations in fee-simple, at the end of five years from the ratification of the said treaty, and thereafter were entitled to the said patents absolutely, without regard to the place of their residence.

The claimant then and there further asserted that the said act of the 23d of August, 1842, violated said fourteenth article in this, that the third section of said act prohibited the commissioners, provided for in said act, from allowing any reservation to any Indian who did not, at the date of the making of the treaty, on the 27th of September, 1830, own an improvement in the Choctaw country; whereas the said fourteenth article imposed no such limitation or condition; but, on the contrary, its effect is and was to allow to each Choctaw head of a family, desirous to remain and become a citizen, to do so, whether he owned an improvement or not, but entitled them, in case they had an improvement, to have such improvement, or a

portion of it, included in the reservation; and this was so declared, in the opinion of the Attorney-General of the United States, dated the 30th of January, 1839.

The claimant then and there further asserted that the third clause of said third section of the act of the 23d of August, 1842, violated the said treaty by excluding from the benefits of the said fourteenth article all Choctaw heads of families who are entitled thereto by the terms of said article, provided they failed to make it appear to the commissioners that they had not received any other grant of land under the provisions of any other article of the treaty; whereas the said fourteenth article contained no such limitation or condition, and such condition was a flagrant violation of the terms of the fourteenth article.

The claimant then and there further asserted that the provisions of the said third section of the said act of 1842, which deprived the said
75 Choctaws of the reservations under the said fourteenth article, and compelled them to take scrip in lieu thereof, because of the facts that the Government of the United States should be found to have sold lands of such Choctaw heads of families including their improvement, violated said treaty.

And the claimant then and there further asserted that said statutes in said special plea set forth were, in other respects than those above stated, unjust and violative of the property and treaty rights of the said claimant and of the said Choctaw heads of families, and of the individuals of the said nation.

The claimant further avers that, before, at, and after the date of the said act of the 23rd of August, 1842, and up to the said 22d of June, 1855, the claimant and the individuals of the said nation continued to assert, as against the defendant, its officers and agents, other wrongs and grievances, among which were the following:

By the fourteenth article of the said treaty of 1830, the Choctaw heads of families were entitled to a period of six months within which to signify their intention to remain, claim reservations, and become citizens of the State; but by the neglect, and default, of the defendant no officer or agent was appointed to whom such intention could be signified, or opportunity of making such election furnished, until more than one-half of the said six months had expired.

And the claimant then and there further asserted that, when the agent was appointed for receiving said election, the defendant entrusted the duty of receiving and recording the evidence of the signification of such intention to remain, to one William Ward, who was, at and during the time of the ostensible discharge of his said duty, habitually drunk; and the said agent was for that reason wholly incompetent to discharge that duty; and was, in the pretended discharge of his said duties, grossly and outrageously abusive, violent, and tyrannical towards the said
76 persons entitled to make said election before him, and who offered to make said election; and this to such an extent that only 69 Choctaw heads of families were, by him, registered as having signified said election; whereas, there was more than 1,500 Choctaw heads of families so entitled to elect, and who desired, and attempted to signify to him, such election, and who were prevented from doing so by his wrongs aforesaid.

The claimant then and there further asserted that the defendant did not

reserve from public sales the lands upon which said Choctaw heads of families resided at the date of said treaty; but, on the contrary, sold the same before the expiration of the five years during which the said Choctaw heads of families were, by the said fourteenth article of said treaty, required to occupy the same.

The claimant then and there further asserted that the defendant did not secure to the said Choctaw heads of families their right to be protected in their possession of the lands, which they desired and were entitled to have secured to them under the provisons of the said fourteenth article; but, on the contrary, permitted a very large proportion of all of the said heads of families, who were entitled to remain under the said article, to be driven off and excluded from their reservation by white settlers who had been permitted to settle in the Choctaw country before the five years expired from the date of the ratification of the said treaty.

And the claimant then and there further asserted that the defendant disposed of, in violation of the stipulations of the fourteenth article of the said treaty, the reservations of 1,155 of the said Choctaw heads of families.

And claimant then and there further asserted that the defendant permitted its emigrating agents to use threats, force, and violence in order to coerce the removal of the said Choctaw heads of families and others
77 who desired, and were entitled, under the said treaty, to remain in their country in Mississippi, and compel them to so remove.

The claimant then and there further asserted that the defendant continued the use of these means, and of other means equally in violation of their treaty rights, to compel the removal of said heads of families and individuals of the nation to the country west of the Mississippi River from about the year 1831 until the 28th of September, 1853.

And claimant then and there further asserted that the defendant passed stringent and restrictive laws in regard to the reservations of the said Choctaw heads of families, which were in violation of, and in conflict with, the stipulations of the said fourteenth article of the said treaty, and by such laws required the said heads of families to show qualifications, in order to be entitled to the said reservations, which were grossly in violation of the said fourteenth article; some of which violations of treaty right as contained in said statutes are above set forth.

And the claimant then and there further asserted that the defendant, through its officers and agents, in executing the said laws above named, and the said provisions thereof above named, which are in violation of said treaty, did oppressively and unjustly exclude a large number of the said heads of families from the lands to which they were entitled under said fourteenth article.

And the claimant then and there further asserted that the defendant failed to allow 1,413 Choctaw heads of families any compensation for their improvements which they lost in consequence of being required by the United States to remove from their said reservations, although compensation for the loss of such improvements was expressly provided in the nineteenth article of said treaty of September 27th, 1830.

And the claimant avers that all the foregoing matters and grievances above averred as having been asserted by the claimant and by the
78 said heads of families and individual members of said nation, as against the defendant, were in fact true.

The claimant further avers that the defendant refused to deliver to 1,155 Choctaw heads of families, who were entitled to reservations in fee-simple, on the 24th day of February, 1836, the certificates for which provision was made in the third section of the act of Congress approved the 23d of August, 1842, and which is named in said special plea, unless such heads of families would consent to remove from the State of Mississippi to the Choctow country west of the Mississippi River; and this refusal was made in violation of the provisions of the said third section, under which it was deliverable; and this course was resorted to as a means of coercing the said Choctaw heads of families, through their known helpless, homeless, and impoverished condition, and their need of something upon which to subsist, to remove, with their children, from their reservations and homes in Mississippi to the West.

And the claimant further avers that the defendant refused to pay to the said Choctaw heads of families, and to their children or legal representatives, any portion of the money appropriated by the act of July 21st, 1852, until the said heads of families, and their children, and their legal representatives, to whom the same became payable, had removed out of the State of Mississippi to the country west of the Mississippi.

And the claimant further avers that the defendant refused to make any compensation to 960 Choctaws who emigrated, at their own expense, from the State of Mississippi to the Choctaw country west of the Mississippi River, and who subsisted themselves there for one year thereafter; although the defendant, by the stipulations of the sixteenth article of the said treaty of 1830, agreed to pay the expenses of such removal and subsistence.

79 And the claimant further avers that the defendant, by means of and through the acts of oppression and wrong-doing above set forth, and by means of its refusing to allow those entitled to reservations to acquire the same, and by reason of its allowing white people to drive them from their homes, and by means of the defendant's disposing of the lands to which they and their people were entitled, rendered the said Choctaws homeless; and by the same means and the refusal to allow to them even the grossly inadequate provisions made in said laws for payments in lieu of the homes and reservations of which they had been so deprived, and by means of other acts of violence, oppression, and outrage, reduced the said Choctaws named in the said special plea, and their children, and nearly all the persons of the said tribe remaining in the State of Mississippi, to a condition so impoverished, helpless, and destitute as that they became, and were, completely within the power and at the mercy of the defendant and its agents; and at the date of the said act of 1842, and thence on to the 22nd of June, 1855, they continued to be in said helpless condition; and the said Choctaws, and heads of families and individuals, by reason of the wrongs and oppressions aforesaid, and their helpless condition, had no choice or option in or about the matter of accepting said moneys and scrip named in said plea on such terms and at such times as the defendant might and did dictate.

Claimant further avers that, at and before the 22nd day of June, 1855, the defendant was justly indebted to the individuals of the said Choctaw Nation in the sum of $8,209,780 as a balance due for the value of the lands to which the said individuals of said Choctaw Nation became and

were entitled under the said fourteenth article of the said treaty, which indebtedness arose as follows:

That of those individuals of the said Choctaw Nation who became, and were, entitled to reservations under the said fourteenth article, the defendant found, as in the said plea set forth, that 1,155 heads of families had complied with the conditions of the said fourteenth article, and were
80 entitled to reservations thereunder; and further found that the quantity of land to which these 1,155 heads of families, and their children, became and were entitled, on the 24th day of February, 1836—the date of the expiration of the five years named in the said article—was 1,404,640 acres; which, at the date last aforesaid, was of the value of $5.50 per acre; making the aggregate value of the lands to which the said 1,155 heads of families and their children became and were entitled, on the 24th day of February, 1836, $7,725,520.

The claimant further avers that the defendant, through its agents and commissioners, named in the said special plea, charged with the duty of ascertaining who were entitled to said reservations, rejected the claims of 246 heads of families to reservations under the said fourteenth article, but who were, in law and fact, justly entitled to said reservations by reason of their complying with all the conditions of said fourteenth article, or by reason of their attempting and tendering such compliance, and who complied fully with such conditions, except so far as prevented by the acts of the defendant through its officers and agents.

The facts showing the right and title of the said 246 rejected claimants are fully set forth in the petition, and are here adopted for the purposes of this reply.

And the quantity of land to which the said 246 rejected claimants were so entitled, on the 24th of February, 1836, was 268,120 acres; which was of the value, at the last-named date, of $5.50 per acre; making the aggregate value of the lands to which said rejected claimants were entitled $1,474,660; and making the aggregate to which both classes of claimants were entitled, to wit, the said 1,155 and the said 246 rejected claimants, equal to $9,200,180.

From this aggregate the defendant became, was, and is entitled to have deducted, as credits, the sum of $118,400, the amount realized by
81 the Choctaws, who received the certificates named in the third section of the act of the 23rd of August, 1842, and which was, by the said section, deliverable east of the Mississippi River. And the defendant became further entitled to be credited, on account of moneys appropriated and paid in lieu of certificates, deliverable under the said last-named section west of the Mississippi River, with the sum of $872,000; the said two credits amounting to the sum of $990,400, and leaving the balance of the said indebtedness, as above stated, $8,209,780.

The claimant further avers that notwithstanding said indebtedness last aforesaid, and notwithstanding the fact that the claimant and the said individuals of the said nation, to whom said indebtedness was owing, earnestly pressed the payment of the said claim or the securement of their said reservations, and continued to do so during all the period from the time that it became due until the said 22d of June, in the year 1855, yet the defendant never paid the said indebtedness or any part thereof, except as hereinabove set forth.

The claimant further avers that, subsequently to the passage of the act of July 21, 1852, as well as before that date and subsequently, as well as before the date of the alleged release set forth in the said special plea, and continuously up to the 22d of June, 1855, the claimant had asserted and continued to assert against the defendant the claims for the losses sustained by the said claimant and the said individuals of the said nation in consequence of the failure of the defendant to carry out the stipulations of the said fourteenth article of said treaty, as well as those arising from the failure to carry out the provisions of the said treaty which required the United States to remove the members of the said Choctaw Nation, at its own expense, from the State of Mississippi to the Choctaw country west of the Mississippi River; and likewise continued to present, assert, and demand payment for the loss of improvements for which they
82 were entitled to be paid by the United States under the provisions of the said treaty; and also for losses of stock and farming utensils and also for the loss and injuries resulting from their constrained removal from the State of Mississippi in violation of the terms of the said treaty, and also for the losses they sustained in consequence of the action of the Government in its issue and delivery of the scrip authorized to be issued and delivered to them in lieu of, and as a substitute for, their lands, as provided in the third section of the act of August 23d, 1842.

The claimant further avers that the above-named means resorted to by the defendant, through its agents, and by white people, against whose acts defendant was, as aforesaid, bound to protect the Choctaws and their property, which were resorted to for the purpose of depriving the said Choctaws of their said property, and driving them from the homes where they were entitled, and desired to elect, to remain, included within them, amongst many other means and resorts of like wrong, violence, and brutality, such acts as threats by United States officers and agents, telling these Choctaws that the United States Government meant to enforce and would compel their removal from the State; that the United States soldiers would be brought, with guns and bayonets, to compel them to go; that the United States would catch their children and tie their legs together like pigs and haul them off in wagons.

And the defendant, through its officers and agents, did seize one of the chiefs of the Choctaws, who, on behalf of the Choctaws, aided in making, and signed the said treaty, of September the 27th, 1830, and bound him, and this publicly as a means of intimidation of the Choctaws, and retained him as a prisoner until he escaped and fled to the swamps, and this so alarmed the people of said Choctaw Nation that they fled, with their women and children, to the woods and swamps, where they were subsisted only
83 by "slipping into their cornfields at night," and carrying thence to their women and children in the swamps, corn for such subsistence.

The claimant avers that these are but examples of the wrongs, too various and numerous to be here set forth, inflicted by the defendant, through its agents, and by white men against whose acts defendant was bound to protect the Choctaws, and which wrongs were inflicted generally, purposely, and continuously, in order to compel them to surrender their lands named in said fourteenth article.

And these acts of wrong, violence, and intimidation so continued, as above stated, during the twenty-two years from A. D. 1831 to A. D. 1853, and were

such as to reduce the said Choctaws, so entitled and electing to remain under said fourteenth article, to the condition in which they are declared to have been in the report, of date 31st of July, 1838, made to the President by the commissioners, appointed and acting under the said act of Congress named in said special plea, to wit, the act of the 3d day of March, 1837, in which they are declared to have been "wantonly driven from their homes, and to have, for several years, been wanderers, living about in all seasons in open camps, and seeking a precarious subsistence, which scarcely sufficed to keep them alive." The claimant avers that into substantially this condition were a large portion of the said Choctaw people named in said special plea reduced and kept by the wrongs aforesaid during all said period of twenty-two years; said Choctaw people being peaceful and orderly and inoffensive towards the Government of the United States and the people thereof, and being, as the last-named report declares, "shy and reserved in their intercourse with the whites."

And the claimant avers that when the Choctaw people so entitled to reservations as to the great body of them, were, by the wrongs aforesaid, reduced to and kept in the said condition of "extreme wretchedness—
wanderers, living about, in all seasons, in open camps, and seeking
84 a precarious subsistence, which scarcely sufficed to keep them
alive"—the Government of the United States, through its agent having official charge of the affairs of the Choctaw people, publicly, and in part for the purpose of intimidating and driving them from their homes, urged and recommended, as the most effective mode of enforcing their emigration, the passage of a law to arrest the "wandering Indians as vagrants, and bind out their children as apprentices if found within the States after a given date;" and it was declared "that such a law would induce them speedily to remove."

The claimant avers that it was in this condition of the Choctaw people, so brought about by the wrongs of the defendant, and by means and by reason of said wrongs, that the said defendant compelled the claimant, and the individuals of the said nation to accept, so far as they ever did, the payments of money and scrip, and the nation to execute the release, which are in the said special plea set forth.

And claimant further avers that at and after the execution of the said release the said claimant and the said individuals, through their representatives and otherwise, made known to the Government of the United States that the said acts were the result of coercion, were unjust, and not binding as a final settlement according to the terms of said alleged release, and the claimant and the said individuals of the nation continued to press the said claims for said balances due them under said fourteenth article up to the said 22d day of June, 1855, as above set forth.

And claimant further avers that, at the times of the commission of the grievances above set forth, the claimant, and the said heads of families, and all the individuals of the said nation, were entitled to receive from the United States, under and by virtue of the said treaty of the 27th of September, 1830, the same protection, in their persons and property,
85 from wrongs, as citizens of the United States are entitled to demand from their Government, and were entitled to have secured to them, from the United States, "every possible degree of justice;" and were, moreover, then and there, and in virtue of the express stipulations

of said treaty, entitled to have such construction of the said treaty as that whenever well founded doubt should arise such treaty should be construed most favorably towards the Choctaws.

Claimant further avers that at the time of the ratification of the said treaty of the 27th of September, 1830, and ever since the said time, the said Choctaw Nation, and the said heads of families thereof, and all the individuals of the said nation were, on account of their dependent and helpless condition, and their other relations to the Government and people of the United States, the dependents and wards of the said Government of the United States, and were so recognized and declared by the law of the land; and, in virtue of and owing to the said dependent and helpless condition, were, by law, entitled to receive from the Government of the United States, in the protection of their persons and property, and in the securement of all their treaty and other rights, the fullest protection, and just, fair, and liberal treatment.

Claimant further avers that, in consideration of all the matters, things, and premises hereinbefore, and above, set forth, and in consideration of the desire of the United States that the Choctaw Indians should relinquish all claim to any territory west of the 100th degree of west longitude, and the desire of the United States to make provision for the permanent settlement within the Choctaw country, of the Wichita and certain other tribes or bands of Indians, by securing from the Choctaws and Chickasaws a lease, to the United States, of their territory, west of the 98th degree of west longitude; and in further consideration of the desire of the United States to embody all subsisting treaty stipulations in one comprehensive
86 instrument, and to adjust and settle, upon considerations just, fair, and liberal, all the claims of the said nation, and of the heads of families and individuals thereof, against the United States, hereinbefore referred to; and in further consideration of the desire of the United States to have the said Choctaw Nation assume the burden and responsibility of the payment, to the heads of families and individuals of the said nation, of any moneys owing to them by the United States; and the United States desiring that said claims should be adjusted upon considerations just, fair, and liberal, and the said Choctaws desiring to secure a settlement of said claims of the said nation, and also of the said heads of families and individuals of the said nation hereinbefore set forth and referred to—

The United States entered into a treaty with the said Choctaw Nation, bearing date the 22d day of June, in the year of our Lord 1855 (11 Statutes at Large, p. 611), wherein and whereby it was stipulated and agreed between the United States and the said nation that the Choctaws should, and they thereby did, cede to the United States the said tract of land lying west of the 100th meridian; and said treaty did provide for settling, within the Choctaw country, other tribes or bands of Indians; and in such treaty the United States did stipulate, in its twenty-first article, that it shall supersede and take the place of all former treaties between the United States and the Choctaws, and also for the settlement, by the award of the Senate of the United States, of the claims so preferred by the said Choctaws against the United States, and named in said plea, including the claims of the 1,155 heads of families named in said special plea; and stipulated that such settlement should be made upon terms and "considerations just, fair, and liberal;" all of which will more fully appear by reference to said treaty.

Claimant further avers that by means and reason of all the premises aforesaid and hereinabove set forth, and especially by means and
87 reason of the wrong sand injustice to which the said nation of Choctaws, and the individuals thereof, were subjected in and about their property and rights, under the said treaty of September 27th, 1830, in the fourteenth article thereof;

And by reason of the grossly inadequate amount and value of the payments made to them as set forth in the said special plea, as contrasted with the value of the said property which purports to be released by said alleged release in the special plea set forth, and which was secured to them by the said fourteenth article as above set forth;

And by reason of the coercion, violence, and oppression, to which they were subjected, in and about being deprived by the defendant, and the officers and agents thereof, of their said property, secured by the said fourteenth article as above set forth;

And by reason of the acts of the claimant, and of the individuals of the said nation, which are in said plea set forth in regard to the receipt of scrip and money, and the execution of the pretended release, set forth in the said plea—in so far as done at all—not being the voluntary acts of the said nation, or of any individual thereof, but, on the contrary thereof, such acts, so far as done, being done under the coercion and compulsion of the defendant, exercised through its laws, officers, and agents;

And by reason of the fact that to hold said release and said receipt of scrip and money, as in the special plea set forth, to constitute a bar to the claims purporting to be covered by said release, would be grossly unjust, unfair, and illiberal under the facts herein set forth;

And by reason of the covenants and stipulations contained in the said treaty of the 22nd of June, 1855, aforesaid, any and all releases, acquittances and bars of said claims which, in law or equity, might, but for the matters herein replied, arise or be implied from the matters and things in said special plea set forth, as a bar to said claims, were and are
88 rendered void, set aside, and annulled by means and reason of the facts and things herein replied; and claimant avers that it was, by both parties to said treaty of the 22d of June, A. D. 1855, meant, intended, and agreed that, for the considerations aforesaid, upon which said last named treaty was based, the stipulations of said treaty should, and the same did, waive, cancel, annul, and set aside any and all releases and acquittances, if any, which might have arisen, or which did arise out of the matters in said special plea set forth; and any and all such acquittances, releases, and bars, if any arose or did exist, which claimant denies, were and are set aside and annulled by the terms and effect of said treaty last aforesaid. And in consideration and by reason of all the premises and facts aforesaid the said claimant and the said heads of families and the said individuals of the said nation became and are entitled to recover their said claims, in the petition and in the said special plea set forth; and such right to such recovery and payment is freed and discharged from any and all defences which could or might, in law or equity, be otherwise set up, by the defendant, under or in virtue of, or connected with, the said alleged release in the said special plea mentioned; and freed from any defences arising from or in virtue of any and all payments to, and receipts by, the said claimant, or the individuals of such

nation, whether such payment was of the scrip named in the said special plea, or of the said $872,000 paid in lieu thereof, except such defence as consists in crediting to the United States, at its actual value, what was, in fact, paid to such claimant and to the individuals of the nation upon account of the lands named in said fourteenth article, which credits have been allowed in the claim made in claimant's petition.

And claimant further avers that, pursuant to the stipluations of said treaty, all the said claims were submitted to the Senate for its ratification, and the said Senate, with full knowledge of said release and after due consideration thereof, in connection with said claims, on the 9th
89 day of March, 1859, adjudged that on account of said claims, and in full satisfaction of the same, there should be allowed to the said Choctaws the net proceeds of the sales of their lands, which said judgment is in the words following, to wit:

"That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the first day of January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of $1.25 per acre; and further, that they be also allowed twelve and one-half cents per acre for the residue of said lands."

Wherefore the plaintiff says that the said release, and the receipt of the said scrip, and of the said $872,000 (in so far as in fact received), and which are in said special plea set forth, do not, nor does either of them, constitute any bar to the said claim of this claimant set forth in said special plea, or of the said claim of the said 1,155 heads of families, nor are the same a bar to any other claims mentioned in said special plea.

JOHN B. LUCE,
Attorney for Petitioner.

SHELLABARGER & WILSON,
J. W. DENVER,
JOHN J. WEED,
F. P. CUPPY,
Of Counsel.

90 VIII.—*Answer to replication.—Filed March* 18, 1885.

And now comes the Attorney-General, and answering the replication of the claimant to the special plea of the defendants herein, denies each and every allegation therein which does not admit specifically, or is not in conformity with, the averments of the said special plea.

THOMAS SIMONS,
Ass't Att'y-General.

91 IX.—*Findings of fact and conclusions of law—filed by the court.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts as follows:

Treaty of 1830.

1.

Messrs. John H. Eaton and John Coffee were appointed commissioners to treat with the Choctaw Nation of Indians, and arrived at Dancing Rab-

bit Creek on the 15th day of September, 1830. On the 18th of September, 1830, the said commissioners met the chiefs, captains, and warriors, and delivered to them a "talk," as it is called in the journal of the commission, the material parts of which is as follows: "By direction of your Great Father we have come amongst you. It is not your land we seek, but your happiness. If you remain you will be subject to the jurisdictions of courts, pay taxes, &c., and if you are satisfied that in such a condition you would be unhappy, then agree to remove beyond the Mississippi, where you will be able to live under your own laws. Record the votes of your headmen, and let us know who is willing to remove and who are opposed. In 1820, by a treaty, a fine country was given you for the use of your people. It was the understanding at that time that the Choctaws would remove. Ten years are passed and you are still here. If you prefer to live here, surrender the lands west, or otherwise remove to them. Hereafter we will not treat with you." September 22, 1830, terms were offered as a basis of a treaty with the Choctaw people.

The council of the Choctaws were surprised at the propositions and representations of the commissioners as to the forfeiture of their lands secured to them by the treaty of 1820; and concluded not to treat for the sale of the lands. The commissioners informed them that they had not come to cavil about prices. As for the lands, the Government cared nothing for them; the object was to get possession of the country. The Indians declared they were unwilling to remove. They were told by the commissioners that they must act freely for themselves, and as they had declared an unwillingness to remove, the commissioners would treat no further, but return home.

On the 25th negotiations were renewed by the Choctaws, and the following basis was proposed in lieu of those rejected.

92 *Choctaw proposals for the basis of a treaty in lieu of those heretofore proposed.*

They are offered from a full consideration of all the circumstances, and from a desire that ample and entire justice and liberality may be extended to your Choctaw brothers. If approved, a treaty to be drawn out in form, removal to take place within two or two and a half years from the ratification of the treaty, and the treaty to be binding from the date of ratification upon the following terms:

Lands reserved, and the value at the lowest Government price only:

4 sections to each of the three chiefs, two to include improvements, is	12 sections.
4 sections to Col. D. Folsom, two to include improvements, is	4
2 to R. Cole, and 2 to J. Garland, former chiefs	4
2 to the speakers of each district	6
2 to J. Pitchlyn, and 2 to J. Juzan	4
	30 sections.
1 section to 13 captains, with others to be named, and to be placed in a supplemental treaty	50 sections.

And that others not provided for above, and who will remove, may be provided for, there shall be reserved three-quarters of a section to each head of a family who during the present year may have had in actual cultivation a farm of thirty acres and a dwelling-house thereon; said reservation to be bounded by quarter-section lines contiguous and adjoining, and to contain the part of the improvement on which the dwelling may be situated; and which, with the consent of the President of the United States, the owner may sell—the number not to exceed five hundred persons; and to those who may have had in cultivation, as aforesaid, a farm of twenty, and less than thirty acres, a reservation of two quarter-sections, to be bounded by quarter-section lines, and to be contiguous and adjoining, and to include the dwelling, and subject to the condition of the preceding class of cases—the number not to exceed four hundred persons. And to those who may have had in cultivation, as aforesaid, a farm of twelve acres, and not more than twenty acres, a reservation, as aforesaid, under the conditions and restrictions aforesaid, one-quarter of a section of land—the number not to exceed four hundred and fifty persons. And to those who may have cultivated, as aforesaid, a farm of four acres, and less than 12 acres, a reservation under the conditions and restrictions aforesaid of one-eighth of a section—the number not to exceed three hundred and fifty persons. And any captain, the number of whom shall not exceed ninety, who shall fail to obtain under any of the provisions less than a section, he shall in that event be entitled to half a section additional, to adjoin his other reservation. In making sale of any part of it, he shall be subjected to the conditions before stated. Children of Choctaw parents residing in the nation, a list and proof of which shall be filed with the agent within six months after the ratification of this treaty, who have neither father nor mother, shall be entitled to a quarter-section of land, to be located under the direction of the President.

Also, such persons wishing to become citizens, and who are heads of families, shall be entitled, for himself or herself, to a section of land; and having lived upon and cultivated the same for six years after the ratification of this treaty, shall receive a grant in fee; the location shall be bounded by sectional lines, and include his or her dwelling.

93 Likewise for each unmarried child residing with him or her, on notice and a request made with the agent in six months from the ratification of such intention, said child shall be entitled, if over ten years of age, to half a section; if less than ten, to a quarter section, to adjoin the parent's location.

Say that only 200 remain, is..... 200 sections.
That 200 children are over 10 years..... 100
That 200 children are under 10 years..... 50

Annuities under former treaties amounting to $11,200, which would expire in 1836, to be continued.

Present annuity offered was $25,000. It is, on account of the large reservations, reduced to $20,000 for twenty years.

Removal, expense of, and support one year.

Education of forty Choctaw boys, twenty years.

Council-house, churches, and houses for chiefs.

Teachers and preachers for twenty years.
1,000 guns, and ammunition, blankets, and kettles.
1,000 axes, hoes, and ploughs.
1,000 wheels, cards, and 400 looms.
3 blacksmiths for sixteen years.
1 millwright for five years.
Suit of clothes and sword to captain; also four years' pay at fifty dollars.
Pay of chiefs for twenty years.

* * * * * * *

MONDAY, 27th.

A meeting at the council-house took place to-day. The treaty as drawn up was submitted, interpreted, and explained; and at one o'clock it was signed.

In the first terms proposed the number who would not probably remove was mentioned as 150, making 96,000 acres.

The foregoing is a substance of the negotiations which preceded the making of the treaty of September, 1830.

II.

On May 21, 1831, the War Department, then having charge of Indian affairs, addressed to Col. Ward, the Indian agent in Mississippi, a letter, the material portion of which is as follows:

"Inclosed a copy of the Choctaw treaty. You will be careful in keeping a register of the reservations taken under the 14th article. A copy is to be made and sent to Department. Your attention is called to the 5th and 6th divisions of article 19. Keep a register of claims filed under these stipulations, noting everything necessary, so that justice may be done. Copies of these registers must be sent to Department."

On June 21, 1831, Ward, the agent, addressed to the Department a letter:

"Yours of the 21st and 27th ultimo have been received. Had opened a book before receipt of letter for those who wished to register under the 14th article. Have advised as to number of acres entered by chiefs under 19th article prior to January 1. All registers will be returned in time to Department. Many more who wished to stay five years than expected. More than 200 applied from one section of the country. I put them off. 94 They were advised by designing men who were opposed to the treaty. This, I trust, is the last effort to thwart the views of the Government. Are white persons, head of family, entitled to the five years' citizenship?

On May 3, 1831, Col. Ward certified to the Department that—

"There was 471,820 acres entered in this office previous to the first of January, according to the provisions of the late treaty, for cultivating last year; 104,620 reserves and 367,300 relinquished to the Government."

III.

Register kept by Col. Ward and certified to War Department shows 69 heads of families, with 150 children under ten years of age and 80 over ten, who had signified their intention to become citizens, according to the provisions of the treaty of 1830, within the six months required by the treaty.

IV.

Correspondence between the Secretary of War and an agent of the United States, appointed under the treaty of September 27, 1830.

WAR DEPARTMENT,
April 26, 1831.

To Maj. F. W. ARMSTRONG:

SIR: By the provisions of the 19th article of a treaty concluded with the Choctaw Indians, reservations are stipulated for to the amount of 458,000 acres. The right to claim these is made to depend on the number of acres which each individual of the several enumerated classes actually "had in cultivation, with a dwelling-house thereon," during the year 1830.

To give certainty and effect to this article, and to avoid everything of fraud and imposition, it becomes necessary that the ceded country be thoroughly examined and the quantity of land cultivated by each Indian during the past year, having a dwelling-house thereon, be ascertained. By the terms of the article, you will perceive that the first class of persons provided for are such as have cultivated fifty acres or more, and varying downwards to such as cultivated in 1830 from two to twelve acres. A reference to the treaty will more fully explain the objects which will require your attention.

Actual surveys to ascertain the quantity of land will not be necessary. The mere stepping over a field, and often the eye alone, will be enough to determine the quantity with sufficient accuracy. What shall be understood by "cultivation"? Not that the party should have planted a crop and worked it regularly. The term may include grass lots, as well as fields which have been used for the growing of products of different kinds. The land must contain dwelling-house, meaning house or cabin in which persons have actually resided on the lands cleared and tended during the year. The house must have been built before date of treaty.

A register of the farms examined, the acres in cultivation, &c., you will furnish for the use of the Department. The names of the Indians claiming under the 19th, with ages of children, you will also furnish.

* * * * * * *

October 26, 1831, the agent reports having finished the work assigned him concludes his letter as follows:

The following table will show the precise quantity of land granted to the Choctaws by the late treaty. The different columns below will exhibit the quantity of land claimed by the returns made to agent
95 on the last day of December, 1830, by the Choctaws, and the claims to which they are actually entitled to, as shown by the books now

returned; also the difference in dollars provided they had relinquished all their lands as claimed:

The parties interested.	50-acre class gives 640.	30-acre class gives 480.	20-acre class gives 350.	12-acre class gives 160.	2-acre class gives 80.	Small class entire number.	Small class, overrun.
Number of each class	40	460	400	350	350	1,763	1,413
Choctaws claim	40	460	400	350	350	113,040	56,520
United States grant	17	46	74	244			
Classes short	23	414	426	106	000		
Acres short	15,720	198,820	104,320	16,960	Acres.	335,820	
Dollars short	7,360	99,360	52,160	8,480	Dollars.	168,360	

In the returns made and placed with the agent each individual was the sole judge of his own claim and the quantity of it. The warriors returning their claims to their captains and they to their three chiefs, by which it would seem that they actually had in cultivation in the year 1830 sufficient land to entitle them to all the benefits that would be granted them, provided all the classes were filed as provided for in the treaty.

Upon this article of the treaty I have given it as my opinion that it was impracticable to comply with the treaty giving it such a construction that the proof required, for the claim could not be furnished until after the examination here made was completed, and that they would have until the first of the next January to relinquish, and that they can now offer the work done by me under the orders of the Government as the best proof of their claim and the quantity of it, as required by the treaty; and, further, as the treaty was not then ratified it could not be expected of them that they would have their fields measured and be at the expense and trouble of traveling to the agency to relinquish until after the treaty was actually ratified.

I have the honor to be, your ob't servant,

F. W. ARMSTRONG.

Some question having arisen as to the manner in which the agent executed his duties in the preparation of said table, the said agent addressed the Commissioner of Indian Affairs on June 16, 1835, as follows:

CHOCTAW AGENCY, *June* 16, 1835.

ELBERT HERRING, Esq.,
Com'r of Ind'n Affairs:

SIR: * * * I will proceed first to answer the inquiries made by you as to the object of the two columns in the register showing the number of males over 16 and the number of males and females under 10.

* * * * * * *

The 14th article of the treaty allows to all children under 10 years of age, where the parent has taken citizenship, one quarter-section, and to those unmarried over 10, residing with the parent, one half-section. The heading of the columns was made by Major Eaton at Washington; and

it would have been as explicit to have said children under 10 as males and females under 10, as it is in the register. The object was to include all children under 10; by having this column in the book the families can be more readily referred to, in cases of difficulty, by persons of the same name claiming, which often happens. Among Indians, even the size as well as the age of the children might be referred to for the purpose of knowing whether the family claiming did live at the particular place, because neighbors are likely to know the number of children in each other's family. The object was to guard against fraud as much as possible, believing that when the Indians got to selling their lands attempts would be made to establish reservations without just claim.

96

I did not enter the nation unil June, 1831, and the work was completed and the register was made out at the Choctaw Agency by the 7th of September of the same year. By referring to the 14th article of the treaty it will be seen that the agent, at the time of the treaty, had a specific duty assigned him, entirely unconnected with the duty assigned to me, by which all the heads of families wishing to become citizens could do so, and have secured to them certain reservations, provided they signified their intention to the agent, Colonel Ward, within the six months from the ratification of the treaty. This right closed on the 24th of August, 1831. Colonel Ward's duties for this class of reserves did not depend on me, nor anything done by me. His work was closed before he got any list from me. My work was not completed until the 7th of September, at which time I furnished Ward with a list of the reservations. I furnished the three chiefs with similar copies, setting forth the names and number of acres claimed by each claimant. These lists were given to enable all those having reservations, by cultivation, to relinquish before the 1st of January, 1832, as provided for by the treaty. In case they failed to relinquish, or did not choose to do so, they then had a right to sell, as provided for. Persons, therefore, wishing to purchase could see the precise claim and number of acres that the Indians had a right to dispose of "with the consent of the President," &c.

* * * * * * *

The first thing to be determined, upon reaching the residence of the Indian, was whether he resided there at the time the treaty was signed by the chiefs and headmen.

Indians had abandoned their lands and taken better locations, but in such instances the location was made on the land occupied at the time of the treaty.

It is proper to state that in every instance we took down the size of the field or patch when below two acres, as near as we could guess, and when blanks are found opposite the names of the heads of families in the register it is because the Indian had nothing but his cabin; he therefore could not get a reservation unless he chose to take citizenship, which it was impossible for me to know at the time I happened at his house, if before the 24th of August, which was the case in every instance, for by that time we had done the work and were on our way to the agency to meet the chiefs as hereafter stated. I had no right, on arriving at an Indian's house, to attempt to get him to decide whether he would take citizenship at that time or not, when by the treaty, as already shown, he was not compelled to answer or determine until the 24th August, 1831. Still the importance

of registering his residence will be seen when it is recollected that he might (as no doubt many did) take citizenship after his place had been examined and registered as not entitled to a cultivation claim because he had no field. By looking over the register you will find many families
97 that have no fields, and unless they signified to Ward their intention to become citizens within the time stipulated they are without any reservations and will fare in the same way that about 1,400 families have fared who really had fields over two and under twelve acres, but in consequence of their class overrunning the 350 granted they are without redress; and a hard case too it is, for they are the poor Indians who should have been provided for when the treaty was made.

(Signed) F. W. ARMSTRONG.

V.

On June 26, 1833, Mr. G. W. Martin was appointed by the War Department to make selections of the locations of land granted to the Choctaws under fourteenth, fifteenth, and nineteenth articles, and on said day he was instructed to call on Ward and Armstrong for the registers of the different classes, as follows:

DEPARTMENT OF WAR, *June* 26, 1833.

To GEORGE W. MARTIN, Esq.,
(*Care of General Coffee, Florence, Alabama:*)

SIR: You are hereby appointed to make the selections of the locations of the tracts of land granted to the Choctaws by the 14th, 15th, and 19th articles of the treaty of September 27, 1830, concluded at Dancing Rabbit Creek. * * * Upon application to Colonel Ward or William Armstrong, esq., at the old agency, you will be furnished with copies of registers of the different classes of reserves in the three districts, and may obtain all the information you will require in the fulfillment of this duty. These registers are supposed to be complete, and you will be governed by them in the location and assignment of reservations in all cases, unless otherwise directed by this Department. The general provisions of the treaty are that the reservations shall be bounded by sectional or quarter sectional lines of survey, and include the improvements of the reservees. An exception to this rule occurs in the 15th article, and in the first clause of the 19th, by which two of the four sections granted to the three chiefs and to Colonel Folsom are to be located "on unoccupied lands." You will consult the wishes of these persons in locating those sections, taking care not to interfere with the possessory rights of any other Indians. The half-sections and quarter-sections allowed to heads of families, in the 14th article, for their children, will adjoin the location of the parents. The number of reservees provided for in the 3d and 4th clauses of the 19th article is limited, and the extent of their respective reservations is proportioned to the number of acres in cultivation. You will learn from the register the names of the persons entitled to lands under the several classes. In locating the three quarter-sections granted to those who shall have cultivated thirty acres or more, you will observe that the treaty provides they shall be "contiguous and adjoining." The reservations allowed under these two clauses are also so to be located as to include that part of the improvement which contains the dwelling house. If the contingency should

happen contemplated in the latter part of the fourth clause, that the number of reservees should exceed the number stipulated for, you will call upon one or more of the chiefs of the district to which they belong to decide who shall be excluded. For instance, one half-section is granted to the cultivators of from twenty to thirty acres, the number not to
98 exceed four hundred. If there should be four hundred and fifty claimants, the chiefs are to decide upon the fifty whose claims must be rejected. The fifth clause provides for the assignment to the captains whose cultivated possessions may entitle them, under the previous clauses, to less than a section, of an additional half-section. This half-section must adjoin the tract which includes their improvements and dwelling-house. The registers also will show you the names and numbers of the orphans entitled to reservations. If any of the Choctaws have no improvements, or if the location of a tract would include the improvements of more than one of them, in that case you must exercise a sound discretion respecting the person to whom such tract shall be assigned. It is desirable that the parties interested should decide for themselves, or agree to submit to the determination of their chief; but if they will not do either, perhaps the best method will be to draw lots in their presence. It is also desirable that the reservees of each district should be located together, and as near to each other as the preservation to each of them of his improvements will permit. You will establish such permanent marks upon each reservation as will show its extent and boundaries.

* * * * * * *

Respectfully,

JOHN ROBB,
Assistant

VI.

Mr. Martin having accepted said appointment, the following correspondence passed between him and the Department of War:

DEPARTMENT OF WAR, *September* 3, 1833.

To GEORGE W. MARTIN, Esq.,
Near Tusculoosa (homa ?), *Washington County, Mississippi:*

SIR: I have received your letter of the 9th ult., suggesting for consideration and decision several questions connected with the execution of your duty in locating the reservations granted by the Choctaw treaty. I have submitted the matter to the President, and his views I now communicate to you.

1st. When there is more than one occupant upon an improvement within the same legal subdivision, the rule of prefereuce suggested by you seems to be a just one. Let the person whose improvement is the oldest, if that fact can be ascertained, receive the tract, and let the reservations of the others be located as near as may be upon such of the adjacent land as may be fit for cultivation. But if the fact of the priority of settlement cannot be satisfactorily ascertained, then let lots be drawn for the tract containing the improvement, and let the location of the others be fixed as already directed.

2d. In locating the reservations of children, which are to adjoin the

tracts of their parents, it is not necessary that the reservations of a parent and child should adjoin each other along the whole extent of one of their lines. It is sufficient that they actually adjoin, whether upon the corners or the sides.

3d. Where a dwelling-house, with a portion of the improvement, is in one legal subdivision, and the residue of the improvement in another, the tract containing the dwelling-house must be located for the claimant. This case is expressly provided for in the treaty, and it is impossible for the President to give any other directions. * * * * *

99 The Government recognizes no sale which has been made, nor will they until the locations are completed and a system adopted and made public for protecting the Indians and their conveyances, and of insuring to them a just consideration for their property. Arrange your business, therefore, with the Indians alone.

I am apprehensive that there will not be time for you to complete this before the arrival of the time fixed for the public (sale?). In that event you will please to give notice to the proper registers and receivers, and they will be instructed to postpone the sale to such a period as you may consider necessary. It is to be hoped, however, the districts can be designated, the sales of which may go on without interfering with the Indian locations.

Very respectfully, &c.,

LEWIS CASS.

DEPARTMENT OF WAR, *October* 11, 1833.

To Col. GEO. W. MARTIN,
Chocchuma, via Rankin, Mississippi:

SIR: I have received your letters of the 15th and 22d ultimo, together with a printed notice inclosed in the former. * * * * *

You will, under no circumstances, allow a reservation to a person whose right is not recognized in the register of claims prepared by Major Armstrong, or by name in the treaty. If, however, you should find that this mode of receiving claims would aid you in the execution of your duty, you are at liberty to pursue it, taking care that a very small compensation is promised to the persons employed, as their labor must be comparatively trifling.

There are three modes of location pointed out by the treaty: one is specific, depending on the situation of the improvement annexed to it, and will require no discretion in fixing it. Another is at the option of the reservee—and here, of course, you must be guided by his own choice. And a third is general, and confided entirely to you.

With respect to the latter, you will observe that the President desires to fulfill the stipulations of the treaty in a spirit of justice and good faith to the Indians. He neither wishes all the valuable tracts to be selected for the Indians which give value to the country nor such ones assigned to them as are unfit for cultivation. Wherever you have a discretion in the location, let the tracts selected be of the average quality of the country, and such as are fit for all farming purposes, and upon which the Indians can obtain a proper support. Let no white man interfere with you in these locations. Receive no representations from any one. Any conveyances made by the Indians are as yet wholly void, and the President does

not recognize the right of a single person claiming lands in the Choctaw country under a deed or conveyance from any Indian.

The representations of the Indians themselves you are at liberty to receive, and it is proper they should be received; but act for yourself, after you have procured all necessary information.

You will consider that clause in your instructions of the 26th of June which requires you to establish permanent marks upon each reservation as applicable only to the plans of surveys, and not to the tracts of land themselves.

By entering the name of each reservee upon his location, the object of that provision will be attained. * * * * *

It is important that the Indian reservations should be brought as much together as possible, and you will not lose sight of this object. If too much scattered, the Indians will be exposed to great inconveniences. Whereas by living in the same neighborhoods they can be better protected in their rights and secured from injuries. Let, therefore, no individual reservations, in the locations of which you can exercise a discretion, be made apart from others.

By the treaty, persons entitled to reservations in consequence of improvements are to locate them upon the legal subdivisions which contain their dwelling-houses. If two or more persons occupy dwelling-houses upon the same tract, let them make an amicable arrangement for preference, if they are willing to do so. If this cannot be done, let the tract be assigned to the oldest settler, where that fact can be determined. When it cannot, you must draw lots for choice.

* * * * * * *

LEWIS CASS.

DEPARTMENT OF WAR, *October* 13, 1834.

To Col. GEORGE W. MARTIN,
Columbus, Mississippi:

SIR: The applications that have from time to time been presented to the Department by persons claiming reservations under the 14th article of the Choctaw treaty, that the sale of the sections they claim may be suspended, have been submitted to the President, who has directed the following instructions to be communicated to you:

In the cases that have been brought to the notice of this Department, it has appeared from the evidence exhibited that the names of the claimants were registered and the record has been lost, or that the record was made on separate slips of paper that cannot not now be found, or that they applied verbally, and were led by the agent to believe that this was a compliance with the treaty, or that their application to be registered was refused without sufficient reason.

There has also been evidence exhibited to show that the agent certified that persons "caused their names to be registered" whose names are not upon the register returned by him. In this state of things the President deems it to be his duty to modify the order that precluded you from locating sections for parties not upon this register, in order that the parties may have an opportunity to obtain the action of Congress upon their claims.

You will therefore give public notice that persons who consider them-

selves entitled to reservations under the 14th article, and whose names are not upon the register of Colonel Ward, will exhibit to you the evidence in support of their claims. This evidence must show that they were citizens of the Choctaw Nation, heads of families, and did signify their intention to become citizens within the time prescribed by the treaty. It must also show the time of their application to be registered and the conversation and circumstances relating to it.

If they bring themselves within the requisition of the 14th article and the evidence induces you to believe that the omission of their names on the register was caused by the mistake or neglect of the agent, you will make locations for them in the manner pointed out in the instructions heretofore given to you. These locations, it must be understood, are contingent, and will be complete only in the event of their being confirmed by Congress.

If the whole or a part of a reservation that may be claimed has been sold, you will designate upon plats tracts of equal dimensions and of as nearly equal value as practicable.

101 The register and receiver of the proper land offices will be instructed to reserve from sale the reservations you may locate under this order, until the views of Congress are ascertained.

* * * * * * *

I am, &c.,

MAHLON DICKERSON,
Acting Secretary of War.

VII.

In pursuance of the foregoing instructions, Mr. Martin located claims and received evidence of claimants. In December, 1834, he transmitted to the Secretary of War a list of 580 claims for reservations under the fourteenth article. In February, 1835, the President transmitted this report to Congress. Martin sent affidavits to War Department of over 40 claimants, showing imperfections in the register of Ward; that persons who sought to be registered were refused and not permitted to do so.

Col. Ward, the agent, at a meeting in June, 1831, when application was made to him by Indians, through an interpreter, for reservations by the presentation of sticks representing the heads of families, and the number and ages of children, threw the sticks away, said there was too many of them; and directed the interpreter to tell them they must move.

The Indians protested, and declared they would not move. They were advised by white persons present to live on their lands, even though they could not be registered. The above was a common method of indicating numbers by the Indians. The agent was a dissipated man, and was intoxicated on that occasion.

The evidence taken by Martin in the investigation of the claims of persons claiming under the fourteenth article establishes that within the time limited for registration, on one occasion, a number of Indians living at Suchennatchie had their names registered, and that such names were not found on the agent's book in the possession of Martin. The book or paper in which the names were taken was either lost by the agent or destroyed by some person.

The agent in the employment of the Government, in carrying out the treaty with the Choctaws discouraged applications for reservations under the fourteenth article; and Col. Ward advised the removing agents to threaten the Indians with punishment if they did not emigrate.

Acts of March 3, 1837 and 1838 (5th Stats. at Large, pp. 180, 181, 211).

VIII.

Under the act of March 3, 1837, Messrs. Vroom, Pray, and Murray were appointed commissioners, and on May 20, 1837, were instructed as follows:

GENTLEMEN: Having accepted commissions authorizing you to adjust claims to reserves under the treaty with the Choctaws of 1830, you will please to conform to these inst uctions in the execution of the duties prescribed in the act of March 3d, 1837, under which you have been appointed, a copy of which is inclosed.

* * * * * * *

You will please to repair to Columbus by the 2d Monday in June, and there determine the course of proceeding that will ensure the most prompt and effectual discharge of your duties, adjourning from place to place as the nature of the service may require. Notice of your ap-
102 pointment will be given to Colonel Martin, to A. V. Brown, esq., now acting as a commissioner, to certify contracts for the sale of Choctaw reserves, to Wm. Armstrong, esq., agent for the Choctaws west of the Mississippi, and to the registers and receivers, and they will all be requested to co-operate with you and render any services in their power.

* * * * * * *

I respectfully request that you will keep this office appraised of your proceedings, and particularly that you will forward a copy of the regulations that you may adopt for the government of your proceedings, &c., as soon as you have agreed upon them.

C. A. HARRIS,
Commissioner.

Said board adopted the following rules:

"The commissioners appointed to adjust claim under 14th article of the treaty of 1830 with the Choctaw Indians hereby give notice that they will meet on the 16th of October at Columbus, Miss. The office will be open from this time, and the secretary will receive any applications which claimants may see fit to make or file. Cases will be docketed in order and taken in order if the same is ready. Claimants will be, if required, heard by counsel. Summons for witnesses will be issued by the secretary. Claimants and their children entitled to reservations must appear before the commissioner in person. The district attorney will act in behalf of the United States. For information of claimants the 14th article of treaty and sections 1, 6, and 7 of the act of 1837 are hereby published."

On March 1, 1838 (Barton being appointed in place of Pray), the board reported to Commissioner of Indian Affairs that they had heard the testimony in 175 claims; that there were to be presented between eight and nine hundred; but by the limitation of the act of 1837 no further cases

could be heard. On March 15, 1838, the board reported that under the extension of the act of 1837 it would be impracticable to finish the cases presented and those which would be presented within the time allowed by the act of 1838. On July 31, 1838, two of the said commissioners made a report to the President, in substance as follows:

Report to the President.

To the President of the United States:

SIR: The undersigned, two of the commissioners appointed under "An act for the appointment of comm'rs to adjust the claims to reservations of land under the 14th article of the treaty of 1830, with the Choctaw Indians," beg leave respectfully to report:

That in obedience to the instructions of the Commissioner of Indian Affairs, dated 20th May, 1837, they opened their office in Columbus, Mississippi, in conjunction with P. R. R. Pray, esq., another comm'r appointed under the same act, and gave notice to the Choctaw Indians of Mississippi and all others interested in claims to land under the fourteenth art. of the treaty of Dancing Rabbit Creek.

* * * * * * *

The board did not open their session for the hearing of testimony until the first day of January last, when they convened at the house of Benjamin Leflore, in Leake County, Miss., and continued their session laboriously, until the expiration of the law under which they were acting, on the first of March last.

At this time the board had heard testimony in one hundred and
103 seventy (175) cases. The Indians, who had attended in bodies of from 500 to 1,500, had returned to their homes.

A copy of this supplementary law was received by them on the 6th day of March at Columbus, Miss., when notice was immediately given that the board would meet on the 29th day of March.

At this time the commissioners attended and renewed their sessions. The business was then prosecuted laboriously until the 14th of May.

It will be perceived by the tabular statement accompanying this communication that of the two hundred and sixty-one (261) cases in which the board have taken testimony, one hundred and sixty-five have been reported upon favorably as having been fully proved, sixty-five cases have been rejected, twenty-six cases have been recommended to the favorable consideration of Congress, and five are unfinished.

* * * * * * *

These are all the laws governing the claims to be examined by the commissioners. By them it became their duty to ascertain—

1st. If the claimant was a Choctaw head of a family, as the treaty requires, or a Choctaw Indian who was the head of a family at the time of the treaty.

2d. If he or she had an improvement at that time.

3d. The number and names of his or her unmarried children over and under ten years of age at the time of the treaty and then residing with them.

4th. The particular section of land to which such head of a family

would be entitled, and whether it or any portion has been sold by the Government.

5th. If the head of such family signified his or her intention to the United States agent within six months after the ratification of the treaty to remain and become a citizen of the States, and whether or not such applicant continued to reside on said lands for five years after the ratification of the treaty.

6. Whether such applicant has removed west of the Mississippi.

* * * * * * *

To avoid all danger of imposition, the board required in every possible case the presence of the claimant and the children for whom he claimed; and before the witnesses were examined and out of their hearing the claimants were interrogated as to their names, their blood (whether Choctaws or not), the number and names of their children for whom they claimed, and the place of their residence at the date of the treaty. They were also questioned as to whether they had counsel, and required to state his name or point him out if present. This was done the better to identify the party and his family, and to give the board some knowledge of the facts to be proved in the case before the witnesses were introduced.

The counsel for the claimants were also required to file with the secretary a written statement of the claims, signed by themselves.

The witnesses examined, it will be observed, were nearly all Indians, and it is obvious that no other testimony could be offered of such facts as were required to be proved. The country at the time of the treaty was occupied by Indians alone, and no others could be cognizant of the residence of Indian heads of families and the ages of their children at the time. Nor could the signification of their intention to remain in the country and take lands under the treaty be known to others than Indians, the United States agent, or some white men accidentally at the agency at the time of the application, which happened in a few cases.

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104 No witnesses being offered on the part of the Government, those offered by the claimants were in all cases closely cross-examined, and the board believe, from their manner and conduct while under examination, that their testimony in relation to facts within their knowledge is generally, and, indeed, almost universally, to be credited. When they had good reason to doubt the integrity of witnesses the board have rejected the testimony.

* * * * * * *

In all cases where the claimant has been actually expelled from his possession within the five years, or in which the land he occupied had been sold by the Government and surrendered to the purchaser, or where the claimant died in possession, the board have considered the cases as standing on the same ground as cases of continued residence, and have allowed them.

It is proper also to state that since the board received a copy of the supplemental law, they are not aware that any case has been presented to them in which the claimant has removed west of the Mississippi. A few such

cases had been heard before, and, as they were upon the record, the board have thought it proper to report them with the rest.

There are many cases also in which claimants have removed from the lands occupied by them at the time of the treaty in consequence of the settlement of the whites in their neighborhood. This, and the consequences naturally resulting from it, and the proofs offered of its effects upon their minds, have induced the board to recommend such cases to Congress for allowance.

The Choctaw Indians are shy and reserved in their intercourse with the whites, and do not readily mix with them. It is proved in a great number of cases that they have been most wantonly abused and ill-treated by them, and that they could not live in peace in the same neighborhood. The large stocks of cattle and hogs introduced by the white settlers destroyed their crops, and their houses and cabins were torn down, burned, or taken possession of by them when they left home on their necessary hunting expeditions or to seek employment in picking cotton, &c. Under these circumstances they were compelled in a great number of cases to remove. It is in proof, also, that many removed in consequence of reports circulated among them that the lands occupied by them had been sold by the Government, and when it was impossible for them to ascertain the truth or falsehood of such reports. They well knew, however, from bitter experience, that, whether true or false, they were at the mercy of their white neighbors. The instances are not rare, as the evidence abundantly shows, in which families have been wantonly driven from their homes and have for several years been wanderers, living about in all seasons in open camps, and seeking a precarious subsistence, which scarcely sufficed to keep them alive.

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IX.

Ward, the agent, was instructed by the War Department on the 21st of May, 1831, to receive the application of the Indians under the fourteenth article. His office was formally opened for business the latter part of June following. He had received and filed thirty-five applications before that time. He was unfit for the duties of the situation; his conduct was marked by acts calculated to deter the Indians from making application; he was abusive and insulting to them, intending thereby to prevent them from making application under said article, and necessitate their going west of the Mississippi.

105 A book in which he kept a number of names as a register was never returned to the Department. The agency was remote from the great body of the nation, and it was very inconvenient for the Indians to make personal application.

The mode adopted by the Indians to communicate to Ward their intention to remain was in conformity to their habit of doing business, which was by delivering sticks representing the number of the heads of families and the number of children of the different ages belonging to each family; the heads of families and the different ages of the children being represented by the length of the sticks.

Ward insisted during the registration that there must be a personal appli-

cation by the head of each family by those who desired the benefits of the fourteenth article; that he could not recognize applications by proxy. He insisted that the Indians had sold their land; that he had been instructed to induce as many as possible to go West; that more had been registered than had been anticipated.

After the 24th of August, 1831, the agents of the United States, Armstrong and Lane, insisted that those whose names were not registered should go West, and if they did not go soldiers would be sent to drive them out, that they would take their children from them, and many other threats were made by them.

At the time of the report of the commissioners under the acts of 1837 and 1838, to wit, on the 31st day of July, 1838, about 5,000 remained in Mississippi. Notwithstanding the efforts of the removing agent of the Government to remove them they remained, asserting their intention to do so, and claiming the benefit of the 14th article of the treaty of 1830. It was the intention of those remaining east of the Mississippi to take the benefit of the 14th article of the treaty.

The number of claimants under the 14th article filed before the board appointed under the act of 1837 and 1838 was 1,349. That number included 261, particularly reported. Besides these, other claims were to be filed at the time of the adjournment of the board.

A book of registration was destroyed at the house of Ward, the agent, but it does not appear that it was different from the one sent to Washington. The commissioners under the acts of 1837 and 1838, in their report to the President, stated that of the 261 cases 165 should be approved, 65 rejected, and 26 recommended to the favorable consideration of Congress. Five cases left unfinished. They returned 381 depositions taken in behalf of the claimants; no testimony taken on behalf of the Government. In taking the testimony the district attorney of the United States attended and cross-examined the witness. The claimants were rigidly cross-examined.

In the presentation of the claims before both commissioners the Indians were represented by agents and attorneys at law, who were interested by having a contingent fee, that being the only means the Indians had to pay.

X.

Act of 23d day of August, 1842 (S. L., page 513).

The following letter was sent by the Commissioner of Indian Affairs to commissioners appointed under the act of 1842:

WAR DEPARTMENT,
Office Indian Affairs, October 24, 1842.

GENTLEMEN: An act of Congress of the 23d August last, entitled "An act to provide for the satisfaction of claims arising under the four-
106 teenth and nineteenth articles of the treaty of Dancing Rabbit Creek, concluded in September, one thousand eight hundred and thirty," having revived the acts of 3d March, 1837, and 22d February, 1838, and the President of the United States having, by and with the advice and consent of the Senate, appointed you commissioners to execute

the several laws referred to, I proceed to communicate instructions for the discharge of the duties imposed.

* * * * * * *

In connection with the first, the seventh section may be adverted to, which expressly negatives the idea of giving, by the proceedings under the law, any sanction to what are called contingent locations, "which have been made by George W. Martin, for the benefit of such Indians as were supposed to have been entitled to other lands which have been sold by the United States, such contingent locations having been made without any legal authority; it being the true intent of this act to reserve to Congress the power of doing that which may appear just when correct knowledge of all the facts is obtained." This provision refers, of course, only to the locations, and is not declaratory of any opinion as to the rights of the claimants. The seventh and eighth sections of the act of 22d February, 1838, present themselves with the foregoing—the first, as excluding the claims of such Indians or heads of Choctaw families as have removed west of the Mississippi; and the last, as directing the name of any claimant to be stricken from the list of claimants who "has attempted, or shall attempt, to substitute the child of any other Indian as and for his own, or has attempted, or shall attempt, by his testimony, to substitute, for the child of another claimant, the child of any other Indian."

* * * * * * *

The power vested in you to examine the claims under the nineteenth article and the supplement was for the first time bestowed by the law last passed. As to these claims you are specially instructed in a subsequent part of this communication.

The 3d section of the act of 1842 construes the 14th article of the treaty, and prescribes the concurrence of the following requisites as necessary to the validity of a claim under it: That the Choctaw claimant did signify his or her intention to the agent in person or by some individual duly authorized and specially directed thereto by said Indian, within six months from the date of ratification of the treaty, to become a citizen of the State, and had his or her name enrolled on the register of the agent for that purpose; or if his or her name was not so enrolled, but was omitted by the agent, shall prove, to the entire satisfaction of the commissioners and the Secretary of War, that he or she did signify his or her intention as aforesaid; that the said Indian, at the making of said treaty, on the 27th September, 1830, owned an improvement in the then Choctaw country, and did reside, at said time and place, upon that identical improvement, or a part of it, for the term of five years continuously next after the ratification of said treaty, viz, from the 24th February, 1836, unless it shall be made to appear that such improvement was, before the 24th February, 1836, disposed of by the President of the United States, and that the reservee was dispossessed by means of such disposition; that it shall be made to appear to the entire satisfaction of said commissioners and the Secretary of War that the said Indian did not receive any other grant of land under the provisions of any other article of said treaty, and did not remove to the Choctaw country west of the Mississippi, but that he or she had continued to reside within the limits of the country ceded by the
107 Choctaw Indians to the United States on the 27th September,

1830. These several requisites being established to the satisfaction of the commissioners, and the Secretary of War concurring therein, it shall be their duty to ascertain the quantity of land to which the Indian is entitled by the 14th article, which shall be located to him according to sectional lines, so as to embrace the improvement, or a part of it, owned by him at the date of the treaty. It is further, by this law, made the duty of the board to ascertain the quantity of land granted by said article to each child of an Indian entitled as aforesaid, according to the limitations contained in the said 14th article, and locate such quantity for said child or children, contiguous to and adjoining his, her, or their parent. But if the United States shall have disposed of any tract of land to which an Indian was entitled under the 14th article, "so that it is now impossible to give said Indian the quantity to which he was entitled, including his improvements," or "any part" of them, "or to his children on the adjoining lands," it becomes the duty of the commissioners to "estimate the quantity to which each Indian is entitled, and allow him or her for the same a quantity of land equal to that allowed, to be taken out of any of the public lands in the States of Mississippi, Louisiana, Alabama, and Arkansas, subject to entry at private sale."

* * * * * * *

The 3d section of the same law requires the commissioners to ascertain the Choctaws, if any, who have relinquished, or offered to relinquish, any reservations to which they were entitled under the 19th article of the treaty, or whose reservations under that article have been sold by the United States; the quantities of land to which such claimants were entitled, and the quantities which should be allowed them on extinguishment of such claims, at the rate of two-fifths of an acre for every acre of the land to which claimants were entitled, "said land having been estimated, under this article, at fifty cents per acre: Provided, nevertheless, That no claim shall be considered or allowed, by said commissioners, for or in the name or behalf of any Indian claimant whose name does not appear upon the lists or registers of claimants made by Major Armstrong, special agent for that purpose, in conjunction with the three chiefs of the three Choctaw districts, and returned to the Department of War in January, eighteen hundred and thirty-two, and who does not appear from these registers to be entitled to a reservation under said nineteenth article."

By the 5th section the commissioners are directed "to ascertain and determine the quantity of land to which any Choctaw or other person named in the supplement to the said treaty of Dancing Rabbit Creek was entitled by virtue thereof, and which such person has by any means been prevented from receiving."

* * * * * * *

You will give notice of your meeting, by public advertisement and hand-bills, particularly informing those having claims that they must be presented on or before the 23d August, 1843, and that if they are not, they will be absolutely barred.

* * * * * * *

The register of W. Ward, containing sixty-nine names of claimants under the 14th article of the treaty, is conclusive as to the registry of those named upon it within the six months limited by the treaty. There

are, besides, eight cases of certificates granted by Wm. Ward and his brother, Stephen Ward, who acted under him, to persons who applied to him for registry, but whose names do not appear on the register; and these certificates having been recognized by the War Department as
108 signifying the intent of the parties under the 14th article, and as equivalent to the formal registration of their names—making an aggregate of seventy-seven. Of these seventy-seven heads of families, sixty-seven have been located to land, and these are in no particular subject to your examination, it being only necessary, before patent issues, that they should severally prove, to the satisfaction of the Executive, their residence for five years after the ratification of the treaty upon the land so assigned them, where they have not already received a title from the Government. Ten, however, of the seventy-seven persons above referred to have not had any particular tract or tracts of land allotted to them; and these, I think, it will be your duty to investigate in reference to all the requisites prescribed in the third section of the law of 1842, except the first, as to which Ward's register or the certificates alluded to are conclusive in their favor; but they may have failed in conformity to one or more of the other requirements. The individuals who have not received their reservations you will perceive by reference to the lists, which embrace as well those located as those unlocated, to enable you to detect attempts, if any shall be made, by the same individuals or their descendants, to claim under the 19th article, or a second time under the 14th. With the same object you will receive a list of those claimants in favor of and against whom the late board reported, into the merits of which you are not to inquire, the report of that commission being subjected to the revision of the President of United States by the sixth section of the law of 1842. When it shall have been reviewed, a list of those claims which shall be favorably disposed of will be furnished you, with instructions to inquire and ascertain whether any of them can now be located according to the provisions of the third section of the law lately passed. The list of approved locations by George W. Martin embraces no claims that are not upon Ward's register, or in favor of which the latter or his brother has not granted certificates. His unapproved locations, of which a list is also furnished, are those under the 14th article, which have been termed contingent, and which will form the great field of your labors.

* * * * * * *

You cannot be too careful in executing the law by which Congress has prescribed the requisites to a valid claim. In arriving at a just conclusion as to the first requirement under the fourteenth article—the fact of the Indian registration—Ward's list, and the additional cases in which he or his brother has given certificates, will be conclusive; but the second aspect which the claim may put on, viz, an offer to register him or herself, will call for a vigorous examination and sifting of the evidence.

* * * * * * *

XI.

Messrs. Claiborne, Graves, and Barton were the original commissioners. Barton having failed to act, Mr. Tyler was appointed in his place, and on March 16, 1844, two new commissioners were appointed in place of Messrs. Claiborne and Graves, making the board Messrs. Rush, Gaines, and Ty-

ler. The claims adjudicated and allowed by this board are as follows: 904 scrip claimants and 53 land claimants. On June 16, 1845, the commissioners reported that all the Choctaw claims arising under the 14th article of the treaty presented in correct form or fact had been finally determined by them, some few cases not adjudicated for want of legal requisites. The findings rendered by these commissioners as aforesaid were confirmed by the Secretary of War. The mode of procedure in taking testimony and investigating the claims were substantially like the former commissions, except as to the presence of the district attorney.

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XII.

Many heads of Choctaw families, who either signified their purpose to remain or were prevented from doing so by the acts of the agents of the United States, were driven from their reservations by white settlers, and before any classification was made under any law passed by Congress the lands of such reserves had been sold to the number of eleven hundred and fifty, and such heads of families prevented from securing their claims under the 14th article. Said eleven hundred and fifty Choctaw heads of families had 1,470 children over ten years of age on the 27th of September, 1830, and 1,219 children under ten years of age at that date.

XIII.

The whole number of heads of families receiving land under 14th article is 143; the number who established their rights under the act of 1842, 1,150; the number disallowed by the Commissioner, 292. One hundred and ninety-one heads of families were rejected by the Commissioner, under the act of 1842, because they had no improvement on their reservations on the 27th of September, 1830, and did not reside on the same for five years continuously after said date. The 191 families were entitled to 225,760 acres, as reservations. The 191 families complied or attempted to comply with the requirements of the 14th article within the time required by said article, but were deprived of their rights under said article by the agents of the defendants.

XIV.

Under the provisions of the act of Congress approved August 23d, 1842, the United States having failed to grant to the said Choctaw heads of families the lands which they and their children claimed under said treaty, and having disposed of the said lands, so that it was impossible to give said Choctaw heads of families the lands whereon they resided at the date of the treaty of 1830, did, between June, 1843, and November, 1851, issue and deliver to the said eleven hundred and fifty-five Choctaw heads of families and to their children the certificates or scrip provided for in the said act, for one million four hundred and four thousand six hundred and forty acres of land, which certificates or scrip the said Choctaw heads of families and their children were required by the United States to receive and accept in lieu of the reservations of land to which, under the said fourteenth article of the treaty, the said Choctaw heads of families and their children claimed.

The United States refused to deliver to the said Choctaw heads of families and their children that one-half of the scrip which might have been delivered to them under the provisions of the said act of Congress east of the Mississippi River, until the said Choctaw heads of families and their children had either started for, or actually arrived in, the Choctaw territory west of the Mississippi River.

110 XV.

Under and by virtue of an act of Congress approved March 3d, 1845, six hundred and ninety-seven thousand six hundred acres of the said certificates or scrip so as aforesaid directed to be delivered to the one thousand one hundred and fifty-five Choctaw heads of families and the irchildren was funded at the value of one dollar and twenty-five cents per acre, with interest payable thereon annually forever at the rate of five per cent. per annum; that the said above-specified number of acres of the said certificates or scrip, which was funded under the said act, was that part of said certificates which was not deliverable east to the said Choctaw heads of families and their children, and not until their arrival in the Choctaw territory west of the Mississippi River; and the United States, subsequent to the passage of the said act, failed to deliver to the said Choctaw heads of families or their children any part of the said certificates which had been directed to be delivered to the said heads of families and their children as aforesaid.

The said scrip which was funded for the benefit of the said one thousand one hundred and fifty-five Choctaw heads of families and their children under the provisions of the act of Congress approvad March 3d, 1845, was funded by the United States at the rate of one dollar and twenty-five cents per acre, which amounted to the sum of eight hundred and seventy-two thousand dollars, and the said sum was paid to the said heads of families and their children, or to their legal representatives, under the provisions of an act of Congress approved July 21st, 1852.

XVI.

The claimants under the 14th article, the said Choctaw heads of families and their children, were reduced to a helpless condition of want, which rendered it practically impossible for them to contend with the United States in their requirement that the said Choctaw heads of families should accept and receive the scrip provided to be issued to them in lieu of the reservations by the act of 1842; and the said scrip and the money paid to redeem the same were taken and accepted because they were powerless to enforce any demands against, or impose conditions upon, the United States.

XVII.

Since the ratification of the treaty of 1830 it does not appear that the Choctaw Nation has elected an additional principal chief for said nation.

XVIII.

At various times between 1834 and 1845 nine hundred and sixty Choctaws, in pursuance of the policy of the Government, emigrated and sub-

sisted themselves in their new homes, at their own expense. The commutation value in money for immigration and subsistence in similar cases, as established by the United States, was $54.16 for each person. That from the beginning of the year 1838 to July, 1856, the United States, at their own expense, removed and subsisted in their new homes for one year six thousand one hundred and eighty-four other Choctaws, not including the nine hundred and sixty above specified, who had remained in the State of Mississippi subsequent to the general removal of the Choctaws which took place in the years 1831, 1832, and 1833.

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XIX.

Subsequent to the year 1843 there were removed by the Government 1,236 Choctaw warriors who were not supplied with "rifles, molds, and ammunition." The value of said articles at the time, in the aggregate, was $18,000, which has not been paid by the United States.

XX.

The amount of interest paid by the United States, under the funding act of 1845, is as follows:

From April 1, 1845, to December 3, 1846	$7, 587 50
From January 1, 1847, to June 30, 1848	32, 455 40
From July 1, 1848, to June 30, 1850	63, 393 13
From July 1, 1850, to June 30, 1852	67, 964 31
Making in the aggregate the sum of	171, 400 34

XXI.

Under the acts of August 30, 1852, and 3d of March, 1853, the Secretary of the Interior, in 1854, rejected the following claims to land:

(1) Ninety-five heads of families; 107 children over and 37 under 10 years of age, belong to the "Bay Indians."

(2) Thirty-six heads of families; and 39 children over and 37 under 10 years, whose claims had been allowed by the Choctaw commission, but rejected by the Secretary of War.

(3) Twenty-six heads of families; 24 children over and 32 under 10 years of age, whose claims had been recommended to the favor of Congress by Murray and Vroom.

(4) Forty-three heads of families; 32 children over and 46 under 10 years, whose claims had been rejected by the Secretary of War because the claims did not show compliance with the requirement of the treaty. Besides these claimants, 54 heads of families, 62 children over and 55 under 10 years, whose claims were rejected by the Board and Secretary of War, and 38 heads of familes, 36 children over and 34 under 10 years, whose cases were reported to Secretary of War without the requisite examination and judgment. The 54 and 38 heads of families were rejected, not having been recommended by the Board of Commissioners.

XXII.

On the 12th day of August, 1833, the Secretary of War appointed William Traherne "to locate the reservations provided for Choctaw orphans by the nineteenth article of the treaty of September 27th, 1830," and on the same day the Commisssioner of Indian Affairs issued to the said Traherne a letter of instructions in substance:

"You having been appointed to locate the reservations for Choctaw orphan children, I have been directed by the Secretary of War to communicate to you the following instructions: The sixth clause of the nineteenth article of the treaty of Dancing Rabbit Creek provides 'that the children of the Choctaw Nation, residing in the nation, who have neither father nor mother, a list of which, with satisfactory proof of parentage and orphanage, being filed with the agent in six months, to be forwarded to the War Department, shall be entitled to a quarter section of land, 112 to be located under the direction of the President; and with his consent, the same may be sold and the proceeds applied to some beneficial purpose for the benefit of said orphans.'

"The whole number of orphan children in the three districts is one hundred and thirty-four; and you will select for each of these a quarter section of land of average quality and value."

On the 12th of April, 1834, said agent made a report of his proceedings to the Secretary of War.

* * * * * * *

"I have selected for the orphan Choctaw children, in conformity with instructions from the office of Indian Affairs of the War Department, under date of August 12th, 1833. So far as I have been enabled to make the locations, I have selected eighty-three quarter sections. I found it necessary for me to examine each tract of land in person before making the locations, which rendered it impracticable for me to complete the selections before the sale of the lands sold, in conformity with the proclamation of the President bearing date on the 12th day of August, A. D. 1833. A large portion of the country ceded to the United States by the treaty of Dancing Rabbit Creek remains yet unsold, and in fact unsurveyed. As soon as the surveys are completed, I shall, unless otherwise instructed by the Department, proceed to complete the locations without any further delay. To those Choctaw orphan children who, by themselves or friends, have made application, I have assigned particular quarter sections of land of as nearly an average quality and value with the other locations as practicable."

XXIII.

The Choctaw Nation by its proper authorities on November 6, 1852, executed and delivered to the United States the following instrument for the purposes therein specified:

"Whereas by an act of Congress entitled 'An act to supply deficiencies in the appropriations for the service of the fiscal year ending the 30th day of June, 1852,' all payments of interest on the amount awarded Choctaw claimants under the 14th article of the treaty of Dancing Rabbit Creek for lands on which they resided, but which it is impossible to

give them, shall cease, and that the Secretary of the Interior be directed to pay said claimants the amount of the principal awards in each case respectively, and that an amount necessary for this purpose be appropriated, not exceeding the sum of $872,000; and that final payment and satisfaction of said awards shall be first ratified and approved as a final release of all claims of such parties under the 14th article of said treaty by the proper national authority of the Choctaws in such form as shall be prescribed by the Secretary of the Interior: Now be it known that the said general council of the Choctaw Nation do hereby ratify and approve the final payment and satisfaction of said awards agreeably to the provisions of the act aforesaid as a final release of the claims of such parties under the 14th article of said treaty.

"A. NAIL, *Speaker.*

"November 6, 1852, passed in the senate.
"Approved.

"D. McCOY, *President.*
"GEORGE W. HARKINS.
"GEORGE FULSOM."

113 XXIV.

On the 9th day of November, 1853, the legislative council of the Choctaw Nation, by means of certain joint resolutions which were approved by the principal chief of said nation, provided for the appointment of a delegation which should represent said nation in the settlement of all the unsettled claims and demands of said nation or individual members thereof against the United States; and that said joint resolutions were in the words and figures following, viz:

"*Resolutions creating a delegation to settle all unsettled business with the Government of the United States.*

"Whereas the Choctaws were and ever have been dissatisfied with the manner in which the treaty of Dancing Rabbit Creek was made, owing to the many circumstances which were created to force them into it, and owing to the exceeding small and inadequate amount which was given as payment for their country; and whereas a large number of claims on the United States, arising under the 14th and 19th and other articles of the treaty of 1830 are still remaining unpaid; and whereas information has reached the council that the demands of a portion of certain claimants have become prejudiced by the unauthorized interference of white men at Washington, who, without the knowledge or consent of the claimants, pretend to be their attorneys; and whereas the claimants have repeatedly, from time to time, called on the council to assist them in procuring what is justly due them from the United States; and whereas, in the opinion of the council, a speedy and final settlement should be made with the United States of the foregoing specification; therefore,

"Resolved, That P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland, be, and are hereby, appointed delegates, and fully empowered to represent and to institute, in behalf of the Choctaw people, a claim upon the United States for the pay and remuneration for the coun-

try which they ceded to the United States Government east of the Mississippi River, and protect and defend all and every right and interest of the Choctaws arising under treaty stipulations or otherwise.

"Be it further resolved, That the said delegates are hereby clothed with full power to settle and dispose of, by treaty or otherwise, all and every claim and interest of the Choctaw people against the Government of the United States, and to adjust and bring to a final close all unsettled business of the Choctaw people with the said Government of the United States."

The said Choctaw delegates or commissioners above named, acting under the authority of the said joint resolution, entered upon the discharge of the duty devolved upon them under said resolutions, and for the purpose of bringing to the attention of the United States the objects of their appointment, on the 5th day of April, 1854, addressed to the Commissioner of Indian Affairs of the United States a communication.

The negotiations commenced by the communication of April 5, 1854, was continued between said delegates and the authorities of the United States down to the settlement of the terms of the treaty of 1855.

In a communication of the said 5th of April, 1854, the delegation presented to the Commissioner of Indian Affairs a general statement or survey of the condition of the relations then existing between the Choctaw Nation and the United States, in which they made serious complaint against the Government, especially for causes of dissatisfaction arising under the treaty of "Dancing Rabbit Creek." It was claimed in that and other communications prior to the treaty of 1855, that scarcely one of the stipulations of said treaty had been carried out by the Government to do justice according to the intent of the treaty.

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That under the fourteenth article every head of a family could have remained east, but that a great many of them yielded to the policy of the Government and consented to go west. That sufficient time was not given them, but that they were hurried off to the detriment of their life and property. They contended that no compensation had been made by the Government for the sacrifices which the people had been subjected to in consequence of being compelled to leave their personal effects.

That in many instances no cattle had been furnished by the Government for the cattle left by the Indians who emigrated, although they were assured that such compensation would be made.

They claimed that their reservations under the fourteenth article were sold by the Government, that the Indians were dispossessed of them by lawless white men, and that threats and intimidation had been used to force the emigration of those who desired to remain and who were entitled to reservations under said article.

They alleged that the laws passed for the examination of their claims under said treaty and said article prescribed a course of adjudication of so rigid and technical a character as necessarily to exclude many just claims; that many were compelled to remove because of the failure of the Government to give them their rights under said article, and that the law unjustly cut off such persons from all benefits; that the scrip issued under the law was paid in such a manner as to make it of but little value to the Indian, and that the result was that those who received anything received but a mere pittance.

They contended that many claims existed unadjusted and unpaid under the nineteenth article; that it was hopeless to press the various claims as individual claims against the Government, and that they could only be settled by the Choctaw Nation, and that so long as they were unsettled here would be controversy and excitement; that the Choctaw Nation could better adjust such claims with the individuals than the United States. They insisted on important national claims which should be adjusted and settled.

They proposed to make arrangement for final adjustment of all matters, national and individual. They proposed a new treaty, and to release the Government from all responsibility for individual claims.

The nation proposed to pay all individual claims under the fourteenth and nineteenth articles, because such claims were not susceptible of proof against the Government, but could be adjusted by the authorities of the nation, provided the nation could effect such a settlement with the Government as the Choctaw people desired.

They claimed that under the treaty of Dancing Rabbit Creek the nation was entitled to the funds arising from the sale of lands ceded, after deducting expenses of sale and the "debt" mentioned in such treaty.

That the Government was a trustee for the Choctaw Nation in the sale of the lands ceded by the treaty of 1830. That after the payment of the expense incident to the execution of the trust, the Indians were entitled to the remainder; and that the payment to the nation of such remainder might operate in law to a satisfaction of indivi'*aul* claims under a new treaty.

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XXV.

The communication of April 5, 1854, of said delegates, was sent to the Secretary of the Interior by the Commissioner of Indian Affairs, and by him referred back to the Commissioner, who, on the 20th of April, 1854, instructed the agent of the United States for the Choctaws to make the requisite inquiry and investigation to ascertain the character and extent of the claims and what arrangement was necessary to accomplish the object in view.

XXVI.

The following paper was submitted to the Commissioner of Indian Affairs by the United States agent for the Choctaws as a comparative estimate or approximate statement of the claims then asserted by the Choctaw commissioners, which statement had been furnished by the Choctaw delegation to said agent:

Estimate of the several amounts in lands, money, farming utensils, rifles, blankets, removal and subsistence, &c., &c., intended to be secured to the Choctaw tribe of Indians under the various stipulations contained in the Choctaw treaty of 1830; for the payment of which the lands ceded to the United States by the Choctaws at that time were pledged. (See article 18th of treaty of 1830.)

Art. 14.—1,250 families, averaging 2½ sections of land, at $1.25 per acre, as reported by different boards of commissioners appointed by the United States..... $2,350,000 00

Art. 15.—Reservations for chiefs, 12 sections	$9,600 00	
Salary of 3 chiefs, 20 years	15,000 00	
Principal chief, 20 years	10,000 00	
3 speakers, $75, 4 years	300 00	
3 secretaries, 4 years	600 00	
99 captains, suits of clothes and swords	5,000 00	
Salary for 99 captains, 4 years	19,800 00	
		60,300 00
Art. 16.—Removal and subsistence	1,200,000 00	
20,000 Indians, 20,000 cattle	100,000 00	
		1,300,000 00
Art. 17.—20 years' annuity, $20,000		400,000 00
Art. 18.—Damages arising in consequence of violation of this stipulation by the citizens and Government of the United States, viz: 1,250 families, claimants under article 14th, for houses and improvements	$125,000 00	
Do. 800 families, under article 19	80,000 00	
		205,000 00
Art. 19.—Cultivation claims and other reservations, at $1.25 per acre		605,000 00
Art. 20.—Education of 40 Choctaw youths, 20 years	$200,000 00	
Council-houses, &c	10,000 00	
Teachers	50,880 00	
Millwrights	3,000 00	
Blankets, looms, &c	200,000 00	
		513,880 00
Articles 1 and 2, supplement: Additional reservations		65,050 00
		5,599,230 00
Expenses incurred by Choctaws in prosecution of claims under the treaty of 1830, and on account of being driven out from their homes		1,000,000 00
Total		6,599,230 00

116 Settlement on the principle of allowing net proceeds of lands.

Total number of acres ceded to the United States under treaty of 1830, at $1.25 per acre; net proceeds at $1 per acre		$7,796,000 00
Deduct for scrip paid	$1,740,000 00	
Reservations secured	300,000 00	
Money and other articles paid	2,178,529 00	
		4,218,529 00
Balance net proceeds		3,577,471 00
Cr.—By unsalable lands, at 62½ cents per acre		1,288,735 50
Balance due Choctaws		2,266,735 50

Or amount secured by treaty of 1830, for which lands were pledged.

United States dr. to Choctaws, treaty stipulations.....	$6,599,230 00
Cr.—By this amount paid	4,218,529 00
Balance due Choctaws.....	2,380,701 00

And the said agent of the United States in the said communication, referring to the said statement transmitted by him to the Commissioner of Indian Affairs, used the following language:

"I have examined this statement carefully, and from the most reliable information I am possessed of, obtained in the Choctaw country and here, I am inclined to think that part of it, embracing the extent of the obligations under the treaty, is as nearly correct as it could be made at this date."

XXVII.

The United States contended that by the terms of the treaty of 1830 the Choctaws made an unqualified and unconditional cession of their lands to the United States, except in so far as it required the proceeds of the sales of the lands to remain a pledge to the several amounts therein secured to them; that too great length of time had elapsed since Congressional and legislative action upon the subject-matter of the fourteenth and nineteenth articles of the treaty of 1830 to reopen the whole subject-matter and enter to an inquiry by way of damages. The commissioners representing the Indians disclaimed demanding anything by way of damages; insisted that, so far as the fourteenth-article claims were concerned, there had been Congressional action as late as two sessions of Congress preceding the Congress of 1854, and that the executive action required by the last proceeding of Congress had not in July, 1854, been had; that the Congressional action relied on by the United States had reference to a different class of claims than those who were entitled to reservations and failed to procure them, by reason of the failure of the Government agent to register their names and the failure of the Government to prevent white persons from driving off the reservees.

XXVIII.

The Choctaw delegates or commissioners, acting under the authority of the said joint resolution set out in the twenty-fourth finding, entered upon the discharge of the duty devolved upon them under said resolutions, and for the purpose of bringing to the attention of the authorized agents of the United States the purpose and objects of their appointment, did, on the 5th day of April, 1854, address to the Commis-
117 sioner of Indian Affairs of the United States a communication, as hereinbefore stated, which referred to unsettled claims of the Choctaw Nation and of individuals of said nation against the United States. Said communication, among other matters, contained the following:

"WASHINGTON CITY, *April* 5, 1854.

"SIR: After some deliberation about the best course for us to pursue in relation to the leading object of our visit to this city as delegates of the Choctaw Nation, we have concluded to explain and submit it in writing, and therefore respectfully address you this communication.

"We might call your attention to many subjects and causes of dissatis-

faction, but we shall notice only a few arising under the treaty of Dancing Rabbit Creek.

* * * "It is the fixed sentiment of our people that scarcely one of its executive stipulations have been carried out by the Government in a manner to do justice and according to its intent.

"Under the fourteenth article of the treaty every head of a family in the nation could have remained east and acquired sufficient quantities of land out of the ceded territory to have made them all independent. The great body of the people, however, yielded to the policy and solicitations of the Government, and consented to remove west.

"We were to have had ample time to prepare therefor, but every means and appliance was used to hurry us off, and the emigration was disastrous in the extreme in the loss of both life and property.

"No means were provided to enable us to take with us such of our personal effects as were indispensable to our comfort and necessities in re-establishing ourselves in a new and wilderness country, and no opportunity given us to dispose of them. We were pushed off and told by the agents of the Government to leave them—that they would be paid for; but not a cent of indemnity therefor did we ever obtain. The treaty stipulated that our cattle should be valued and paid for, or others furnished, west; but in a very large number of cases no such valuation was made, and of course no compensation, in money or other cattle, obtained.

"There are hundreds of just claims of this kind in the nation, which we have found it to be hopeless to urge on the Government.

"Some of the more independent of our people refused to be hurried off by the Government agents, and to be removed under the uncomfortable arrangements provided. They preferred to, and did, remove and subsist themselves, thereby acquiring a right to compensation therefor, but which many have never received.

"Consider the history of the execution of the fourteenth article of the treaty and the wrong and injustice thereby inflicted upon a large portion of that class who elected to take advantage of its provisions. Their reservations were sold from them by the Government as public land, or they were forcibly dispossessed of, or by threats and intimidations driven from them by heartless and lawless white men. When these facts became known to the Government, justice required that it should repossess them of their property, but no effort for that purpose was made. They were told that their reservations were gone, and could not be restored.

"For years they were petitioners in vain for some just remuneration for their lost rights; and when, at last, a law was passed for an examination of their claims, it prescribed a course of adjudication of so rigid and technical a character as necessarily to exclude many just claims. Those that did not come within the exact measure of this strict and restrictive law were rejected, though, in justice and equity, they were,
118 under the circumstances, full as meritorious as those that were allowed. From lapse of time and death and dispersion of witnesses, cases that did not come within the specific requirements of the law could not be established.

"The investigation was such as could be successfully met only by intelligent persons familiar with judicial proceedings, and who had known from the first, the importance of preserving and preparing for the establishment of every fact connected with the loss of their rights. Not one

of the claimants could meet it without the assistance of able and astute attorneys, whom they were all compelled to employ, and to agree to pay one-half of what was recovered for them.

"Many of the reservees despairing of obtaining any remuneration from the Government for their lost rights, and being destitute of means and resources, were compelled to take a refuge with their brethren in the west before the law passed for the adjudication of the claims. All such the law cut off entirely, because they had removed; while, in the case of those who remained, and whose rights were established, the Government withheld the inadequate compensation it determined to allow them unless they did remove, though they were citizens of Mississippi, and, by the treaty, were entitled to remain and enjoy all their rights there. It is true that a portion of one-half of the scrip that was granted them in lieu of their lost reservations was paid east of the Mississippi River; but it was paid in such a manner that it all went into the hands of attorneys and speculators, and was of no benefit whatever to its rightful owners. Most of that which was paid to them was issued in the Choctaw country west, where they could not locate it, and it was comparatively valueless. They had to dispose of it for what they could get from speculators combined together to obtain it at the lowest rates. The price realized was seldom greater than about thirty-one and a quarter cents per acre—only one-fourth of the lowest price they could have obtained for the lands they could have located with the scrip had it been given to them east. Their own lands, to which they were entitled under the treaty, but of which they were dispossessed, they could have sold in many cases, for from five to ten dollars an acre.

"The result is that those who have obtained anything have received the merest pittance—a compensation wholly inadequate; while there are hundreds whose claims are quite as just and meritorious as those that have been allowed that have never received anything.

"The nineteenth article of the treaty likewise granted reservations of limited extent to particular classes of our people without the condition prescribed by the fourteenth article, of their remaining thereon, and which they were at liberty to sell, with the assent of the President. But if these preferred or omitted to take the reservations, they were to be compensated therefor in money at the rate of 50 cents per acre. Many claims of this class remain unadjusted and unpaid, notwithstanding the repeated solicitations, prayers, and efforts of our people to obtain a settlement of them.

"But we will not proceed further with this painful recital of individual rights sacrificed and neglected. The claims that have grown out of them are numerous and just and ought to be settled. They have continued to be asserted and urged, from time to time, for more than twenty years, but without effect. It is hopeless longer to press them upon the Government, as they cannot now be proved up with that accuracy and certainty which it requires in all cases to avoid fraud and imposition.

"They can be settled, in a manner to do justice, only by ourselves. We know the parties and all the facts connected with their demands,
119 and how far the latter are well founded and worthy of compensation or otherwise. So long as they remain unadjusted, our people will be kept in a state of controversy and excitement. The authorities of the nation and our agent will continue to be importuned, as they are now, so that they will have no peace in regard to them; while the claimants, in the

hope of obtaining justice, will continue to rely on the expectation thereof, to the neglect of all other duties and interests, setting an example of idleness pernicious and hurtful to others, and too likely to be followed by many.

"There are, also, important national claims and pecuniary rights requiring to be adjusted and settled. We will, however, mention now only one case of this kind in which injustice has been done to us, deferring, till a more appropriate occasion, a full and complete exposition on this subject, should it become necessary. We refer to the simple matter of 'arrearages,' payable to us as annuities, about which there should be no mistake or difficulty. The amounts are fixed and should have been paid over regularly and without abatement; but this has not been done.

"An investigation in the office where the vouchers and evidence of all the payments and expenditures to and for us are kept, made at the instance of your office nearly two years ago, shows, beyond dispute, that of the amounts due and payable on this account from 1831 to 1850 the considerable sum of over $90,000 has been withheld and never paid.

"We wish to make an arrangement for a final adjustment of all such matters, both individual and national. We propose to release the Government from all further obligation and liability in regard to the former, which we will assume and settle, with the assistance of our agent, out of our own funds, if we can obtain and have the requisite control over what is justly and fairly due to us. What would be the aggregate of the amount to which we are entitled we do not know. A proper investigation would be necessary to ascertain it. Such portion of it as might not be required for the satisfaction of the private rights and claims which we propose to assume we wish to consolidate or convert into one single national fund, applicable to great national objects and purposes only, such as education, necessary governmental expenses on an economical scale, and legitimate and proper objects of internal improvement, as roads, bridges, mills, mechanical establishments, and agriculture. We desire to put an end, now and forever, to everything like distributive annuities, which we consider a curse instead of a benefit.

"To secure the desirable and important ends we have thus briefly and imperfectly submitted, a new treaty will be necessary, which we are fully empowered to enter into should it be the pleasure of the Government to entertain and consent to the proposition. We should also be glad to enter into a new treaty, for the excellent reasons recommended in your annual report, to establish one simple code, easily understood and administered, in lieu of the rude, inharmonious, and, in some case, inconsistent, stipulations of our various existing treaties.

"From motives of delicacy we have abstained from consulting our esteemed agent upon the subject of this communication, leaving him free to be the first consulted by the Department thereon, so far as it may think proper to do so.

"With great respect, we have the honor to be your most obedient servants,

"P. P. PITCHLYN,
"ISRAEL FOLSOM,
"SAMUEL GARLAND,
"DICKSON W. LEWIS.

"Hon. G. W. MANYPENNY,
Commissioner of Indian Affairs."

120 The said communication was, by the Commissioner of Indian Affairs, transmitted to the Secretary of the Interior on the 13th of April, 1854, as hereinbefore stated, with the recommendation that the duty of furnishing the information required in conducting the negotiations proposed by the Choctaw commissioners should be "assigned to Indian Agent Cooper, who was at the time the United States agent appointed for the Choctaws, so that the Department may be fully informed of the magnitude and nature of the claims of the Choctaws and be better prepared to enter into such an arrangement with the delegation as may be suitable and proper for the accomplishment of the objects in view. Mr. Cooper, the Indian agent, addressed a letter to said commissioners, and they answered as follows (immaterial portions omitted):

WASHINGTON CITY, *May* 1, 1854.

SIR: In regard to that portion of your letter of the 20th ultimo, which we acknowledged on the same day, inviting a communication from us in relation to the character and extent of the claim of the Choctaws against the United States, we beg leave to remark that we have not assumed the position of contending for the payment of any particular claims by the United States. That there are just claims to a large amount, arising under the Dancing Rabbit Creek treaty, which have never been settled, you cannot but be aware from what you have already learned during even your brief official connection with our people. To the more important classes of these claims we briefly adverted in our letter to the honorable Commissioner of Indian Affairs of the 5th ultimo, which has been referred to you. We also stated some of the reasons why, at this late day, we never could hope to effect a just settlement of them by the Government. The unavailing efforts of twenty years to accomplish that object leave no ground for any other conclusion. The most of the claims depend upon facts which our people are unable to establish in such a manner as to bring them within any rule of adjudication and settlement which the Government has been, or will be, willing to adopt. We have been dealt with as though we were intelligent white men; having the capacity, and knowing the importance of collecting and preserving evidence in relation to the claims. From lapse of time these facts cannot now be substantiated to the satisfaction of the Government. They have, in a measure, become only traditionary; yet the claims are not the less just, and ought to be settled. Until this is done in some way, neither the authorities of the nation nor our agent will be free from embarrassing and perplexing importunity upon the subject. An Indian never gives up a claim which he knows to be just, but will continue to urge and press it at every opportunity. And, unfortunately, he will, as a general rule, do very little else tending to his advantage. He will live on in hope of obtaining his demand, and the result is a life of idleness and misery. From the number of those among our people having unadjusted claims, we have seen but too many such examples.

Though these individual claims can never be proved up, so that justice can be done directly by the Government, they are known, or can be ascertained among ourselves, and, with your assistance, they can be justly and satisfactorily disposed of, so as to put an end to them forever. This we are willing to do out of our own funds, if we can effect such a national settlement and arrangement with the Government as we and our people desire. As to the extent of these claims, we are not in a situation at pres-

ent to furnish any accurate information. We have not the means of making any reliable estimate of their amount. They are known to be
121 numerous, and it will require a very large sum to satisfy them. Should the Department insist on an estimate of them, we must ask your kind assistance in the preparation of one. * * *

On the 30th of May, 1854, the Choctaw commissioners again addressed the agent of the United States as follows:

"Our business has now come to an important point, and we hope that a full and liberal consideration will be given to it. The Choctaws have been waiting patiently for twenty odd years for a just settlement under the treaty of 1830, and we trust that such a settlement will soon be made. It is time that all matters between them and the United States were finally settled and disposed of. It is of great importance to them that this should be done. They wish to turn their whole attention and efforts to the improvement of their people, by the extension of schools and other means of enlightenment and civilization. It is of consequence to them to know what resources they will have to rely upon. It is their wish and intention to devote all their means to that great object. They hope, therefore, that the Government will now deal liberally with them, so as to contribute to so important a result. They want, however, nothing but justice; but this is impossible for an Indian tribe to get, unless the Government acts in a liberal spirit."

The negotiations between the Choctaw commissioners and the Secretary of the Interior, the Commissioners of Indian Affairs, and Indian Agent Cooper were continued until the 25th of September, 1854, when they were terminated by the refusal of the Secretary of the Interior to further continue them.

The Choctaw commissioners, on the 3d day of February, 1855, brought the subject-matter of their previous negotiations to the attention of the President. In their address to the President the commissioners refer to the negotiations which had taken place the preceding year, and the claims and demands which had been then presented for consideration, as shown in the correspondence which had passed between them and the agents of the United States.

On the 9th of April, 1855, the negotiations were resumed at the instance of the United States, and on that day the Choctaw commissioners were addressed by the agent of the United States as follows:

"I am to-day in receipt of a letter from the Hon. George W. Manypenny, Commissioner of Indian Affairs, instructing me 'to confer with the Choctaw delegation, now in this city, for the purpose of ascertaining what arrangements, if any, can be made with them, having in view the adjustment of all differences between their tribe and the Chickasaw tribe of Indians, the Government of the United States, and the permanent settlement of the Wichita and other bands of Indians in the Choctaw country.'"

The negotiations commenced on the 5th day of April, 1854, were suspended in September, 1854, but were renewed on the 9th day of April, 1855, and continued until the 18th day of June, 1855. The negotiations between the Choctaw commissioners, on behalf of the Choctaw Nation, the Commissioner of Indian Affairs and the Secretary of the Interior, on behalf of the United States, were conducted with reference to the accomplishment of the following objects:

First. That the United States should provide, in a new treaty, for an examination and settlement of all the claims of the Choctaws, whether national or individual, under the treaty of 1830, as specified in their letter to the Commissioner of Indian Affairs dated April 5, 1854.

Second. That the Choctaws should adjust their disputes with the Chickasaws; should lease to the United States "all that portion of
122 their common territory between the 98th and the 100th degree of west longitude, for the permanent settlement of the Wichita and such other bands of Indians as the Government might desire to locate therein"; and should absolutely and forever quit-claim and relinquish to the United States all their right, title, and interest in and to any and all lands west of the 100th degree of west longitude.

XXIX.

Allowing to each head of a Choctaw family 640 acres, to each child over ten years of age 320 acres, and to each child under 10 years of age 160 acres, the average Choctaw family would be entitled to 1,180 acres.

The average value of the land ceded by the treaty of 1830, and to which the reservations provided by the treaty applies, was, in 1830 and 1831, the sum of $1.85 per acre.

XXX.

On the 4th day of June, 1856, the Acting Commissioner of Indian Affairs transmitted to Hon. W. K. Sebastian, chairman of the Committee on Indian Affairs of the United States Senate, a communication in reply to inquiries addressed to the Commissioner of Indian Affairs on behalf of said Senate committee, in which said communication there is contained the following language:

"Third. The aggregate of such scrip so allowed, the periods when the same was paid, the disposition made thereof by the Indians, and how much they [the Choctaws] realized therefor.

"The aggregate scrip allowed, as before stated, was 3,844 pieces, calling for 701,680 acres of land; and the periods when the same were paid are as follows:

Names of agents by whom paid out.	Heads of families.	Children.	
		Over 10.	Under 10.
John J. McRea, from June, 1843, to March, 1845	95	120	125
Maj. William Armstrong, from February, 1845, to June, 1847	406	535	460
Col. S. M. Rutherford, from April, 1848, to June, 1849	229	276	169
Col. John Drennen, from August, 1849, to May, 1851	143	171	127
Col. John Drennen, by William Wilson, clerk, from May, 1850, to July, 1851	24	31	25
Col. J. H. Bowman, from August to November, 1851	253	335	309
	1,150	1,468	1,215
Eleven pieces of scrip returned by Colonel Bowman	5	2	4
	1,155	1,470	1,219
Duplicate pieces of scrip returned	5	13	6

"There is no data in this office from which to ascertain with certainty the disposition made or the amount realized by the Choctaws for their scrip. It appears, however, by a statement made by Superintendent Rutherford in September, 1847, that of 1,401 pieces of scrip transferred in the year '1846 and the first part of 1847,' that 213 halves, 227 quarters, and 190 eighths were transferred by the holders to individuals in consideration of services; that 78 halves, 95 quarters, and 92 eighths were sold for 50 cents per acre; that 33 halves, 50 quarters, and 50 eighths
123 were sold at $200 per section; that 284 Indians, who denied the claims of agents, sold 73 halves, 122 quarters, and 89 eighths at $200 per section; that 80 *pieces* sold 6 halves, 40 quarters, and 34 eighths at $400 per section, and that 9 persons sold 3 halves, 1 quarter, and 5 eighths at $480 per section.

"It is presumed that these sales present a pretty fair sample of the disposition made and the average prices realized for the balance of the scrip."

XXXI.

Boundary.

In March, 1825, the Secretary of War directed a surveyor to view the line forming the eastern boundary of the lands of the claimant west of the Mississippi River, as fixed by the treaty of 1825, and the said surveyor, in November, 1825, ran and marked a line purporting to be a line so fixed, and made a return of his survey to said Secretary. The line so run and marked was supposed to be the true boundary, and the surveys of public lands in the State of Arkansas were carried up to it.

In May, 1854, the claimant requested of the defendants that said line be run and marked again on account of the disappearance of most of the old marks, and a stipulation in that connection was inserted in the treaty of June 22, 1855, the negotiation of which was then pending.

In October, 1857, the Commissioner of Indian Affairs employed surveyors to run the eastern boundary line in accordance with the treaty of 1855; who, beginning their work at the northern end of the line, soon reported that the old line run by the first surveyor diverged westward from what they found to be a true south line, and they were thereupon directed by the Commissioner to confine their labor to retracing and marking the old line, which they did.

In the year 1877 H. E. McKee, employed as surveyor by the Secretary of the Interior for that purpose, under authority of the act of Congress approved March 3, 1875, entitled "An act to establish the boundary line between the State of Arkansas and the Indian country," retraced and marked the boundary line between the State of Arkansas and the Indian country as originally surveyed and marked, and upon which the lines of the surveys of the public lands in the State of Arkansas were closed, and found the same to run westward from what he found the boundary line would be if run due south to Red River from the point on the Arkansas River 100 paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and noted the variations, and made his return of said survey, from which and other data in the Land Office that office has computed the area of the land taken from the

Choctaw country by the original boundary line, retraced and marked by said McKee as aforesaid, to be 136,204.02 acres.

It appears from the records of the Interior Department that up to August, 1881, there had been sold of the lands included in said area 21,211.33 acres, realizing $23,930.61; that there had been otherwise disposed of 35,428.56 acres, and that 79,564.13 acres remained unsold.

124 XXXII.

Under the act of Congress approved March 3, 1865, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes for the year ending June 30, 1866," the Secretary of the Treasury paid to the Secretary of the Interior $250,000 for the purposes therein expressed, and the Secretary of the Interior expended the same for the relief of individual members of Cherokee, Creek, Choctaw, Chickasaw, Seminole, Wichita, and other affiliated tribes of Indians who had been driven from their homes and reduced to want on account of their friendship to the Government.

XXXIII.

During the war carried on by the so-called Confederate States against the defendants the claimant was in a state of actual hostility to the Government of the defendants, and gave aid and comfort to the said States, making, on July 12, 1861, therewith a treaty of alliance, offensive and defensive, in which the said Confederate States stipulated to assume and discharge all obligations of the defendants to the claimant existing or accruing under treaties between the said parties made prior to the secession of said States.

XXXIV.

On the 1st of July, 1866, there was unpaid to the claimant from the United States the sum of four hundred and six thousand two hundred and eighty-four dollars and ninety-three cents ($406,284.93), which sum accrued under treaty stipulations and acts of Congress between July 1, 1861, and July 1, 1866; that between the above-specified dates the United States paid, laid out, and expended for the use and benefit of the claimant and individual members of the Choctaw Nation, the sum of three hundred and forty-six thousand eight hundred and thirty-five dollars and sixty-one cents ($346,835.61), leaving a balance unappropriated and on account of the moneys accruing under the stipulations of the above-specified articles of the said treaty amounting to the sum of fifty-nine thousand four hundred and forty-nine dollars and thirty-two cents, the payment of which had been suspended under acts of Congress between July 5, 1862, and March 3, 1865. The whole of said $406,284.93 was spent by the United States under the said act of Congress for the benefit of the Choctaw and other Indian tribes, but the sum of $59,449.32 was spent for other Indians than the Choctaw.

XXXV.

The whole number of acres embraced in the cession made by the Choctaws in the treaty of 1830, 10,423,139.

The cost of surveying and selling, not including annuities, &c., of these particular lands, is 3.16 cents an acre.

The aggregate amount received for the portion so sold, $7,711,672.05.

The quantity of land contained in all the reservations allowed and secured under the provisions of said treaty is 334,101.02, which includes the reservation of the Choctaw orphans.

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XXXVI.

Statement of account with the Choctaw Indians, in conformity with rule of the Court of Claims dated Dec. 13th, 1882, in case No. 12742, entitled "The Choctaw Nation versus the United States."

CREDITS.

Amounts received from sales of Choctaw lands to January 1, 1859. 6,024,835.50 acres		$7,711,672 19
Military bounty-land warrants located, 172,196.47 acres, at $1.25 per acre		215,245 59
Residue of said lands remaining unsold January 1, 1859 (not including 334,101.02 acres deducted and excluded from this account per resolution of Senate of the United States of March 9, 1859), 3,892,006.70 acres, at 12½ cents per acre		486,500 83
		8,413,418 61

DEBITS.

Expenses incident to sale of 6,197,031.97 acres	$100,040 65	
Cost of survey of entire reservation, 10,423,139.69 acres, at 1½ cents per acre	156,347 09	
		256,387 74
Net amount accruing to Choctaw Indians		8,157,030 87

N. C. McFARLAND,
Commissioner.

DEPARTMENT OF THE INTERIOR,
General Land Office, January 26, 1883.

Statement showing the sales of Choctaw lands, amount received therefrom, expenses incident thereto, and the net proceeds accruing to the Choctaw Indians, under a resolution of the United States Senate of March 9th, 1859.

Years.	Acres.	Amount.	Expenses.	Net proceeds.
1833	465,637.51	$633,370 85	$9,399 79	$623,971 06
1834	1,076,420.96	1,421,989 ›1	11,653 54	1,410,336 27
1835	1,993,194.48	2,655,322 43	20,222 06	2,635,100 37
1836	1,447,036.50	1,809,199 65	17,391 02	1,791,808 63
1837	153,218.07	191,465 86	5,416 55	186,049 31
1838	36,283.71	45,490 82	1,265 61	44,225 21
1839	5,470.21	6,841 99	317 30	6,524 69
1840	14,689.59	18,102 93	481 88	17,621 05
1841	13,849.97	17,187 79	472 25	16,715 54
1842	42,090.45	52,339 25	1,157 21	51,182 04
1843	19,445.62	24,311 09	1,291 29	23,019 80
1844	15,780.25	19,723 24	740 99	18,982 25
1845	15,321.90	20,004 01	760 22	19,243 79
1846	40,855.00	52,497 69	2,172 49	50,325 20
1847	70,456.40	88,358 56	3,415 99	84,942 57
1848	20,557.47	25,707 99	1,043 24	24,664 75
1849	21,835.38	27,620 04	926 16	26,693 88
1850	18,996.13	23,744 53	957 69	22,786 84
1851	10,171.15	12,714 20	579 78	12,134 42
1852	8,695.13	10,633 37	351 44	10,281 93
1853	85,388.27	122,081 99	3,184 32	118,897 67
1854	167,111.63	136,871 77	5,089 18	131,782 59
1855	123,991.72	127,263 86	4,304 55	122,959 31
1856	49,916.17	56,311 26	2,876 59	53,434 67
1857	54,975.76	56,222 51	2,180 87	54,041 64
1858	53,446.07	56,294 70	2,388 64	53,906 06
Total	6,024,835.50	7,711,672 19	100,040 65	7,611,631 54

N. C. McFARLAND,
Commissioner.

DEPARTMENT OF THE INTERIOR,
General Land Office, January 26th, 1883.

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XXXVII.

Proceedings under the treaty of 1855.

Said treaty was ratified by the United States on the 21st of February, 1856, and the Choctaw Nation, by its delegates, on the 18th of March, 1856, presented a memorial to the Senate, praying that body to proceed to the adjudication of its claims against the United States according to the stipulations of said treaty, which memorial was on the 18th day of March, 1856, referred for examination and report to the Committee on Indian Affairs of the Senate.

The Senate committee considered said memorial, made an investigation, and heard arguments in support of the claims of the Choctaw Nation against the United States existing previous to the date of said treaty; and the Senate retained said memorial, and considered the claims and demands of the Choctaw Nation, as presented by said memorial, until the 9th day of March, 1859.

The claims mentioned in the preamble of the treaty of 1855, to wit, "their unsettled claims, whether national or individual," and mentioned in the 11th article of the treaty as "their rights and claims against the United States," are the same which were presented to the Senate in the memorial referred to the Senate committee on the 18th of March.

The consideration which was given by the Senate to the subjects-matter, so submitted to it by the said eleventh article of the said treaty, and to the evidence which was so presented to, and taken and considered by, the

Senate, was full, fair, and impartial, and its adjudication, as made under the said article, was not influenced or affected by, and was in no way or degree the result of, any fraud, corruption, partiality, and there is no evidence tending to show that it was the result of surprise, or mistake on the part of the Senate, or of any member thereof.

XXXVIII.

On the 9th day of March, 1859, the Senate of the United States, acting under and by virtue of the authority contained in the stipulations of said article eleven of the treaty of June 2d, 1855, having considered the subject-matter of said claims and demands of the claimant against the United States, adopted and caused to be entered of record in the Senate of the United States the following preamble and resolution :

"Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians, provides that the following questions be submitted for decision to the Senate of the United States :

"1st. Whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or, second, whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much—

"Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the 1st day of
127 January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of one dollar and twenty-five cents per acre; and, further, that they be also allowed twelve and a half cents per acre for the residue of said lands."

And the said resolution, thus adopted on the said 9th day of March, 1859, was, by the Senate, declared to be its award and judgment upon the questions and matters submitted to it for adjudication by the eleventh article of the treaty of June 22, 1855.

XXXIX.

That on the said 9th day of March, 1859, the Senate of the United States adopted and caused to be entered of record a certain other resolution for the purpose of ascertaining the amount due to the claimant under the resolution, recited in the next preceding finding, which resolution, designed by the Senate for said purpose, is in the words following, viz:

"Resolved, That the Secretary of the Interior cause an account to be stated with the Choctaws showing what amount is due them according to the above-prescribed principles of settlement, and report the same to Congress."

And the Secretary of the Interior, in compliance with the mandate of

said resolution, did, on the 8th day of May, 1860, transmit to Congress a statement of account with the claimant, which is known and described as [House Ex. Doc. No. 82, 36th Congress, 1st session]; and so much and such parts of said document as states what amount the Secretary of the Interior found to be due to the claimant under the said resolution set forth in the next preceding request, is in the words and figures following, to wit:

Statement of account with the Choctaw Indians, in conformity with the resolutions and decision of the Senate of the United States of March 29, 1859.

	Acres.
Total area of lands ceded by the Choctaws by the treaty of September 27, 1830	10,423,139.69
Area of reservations "allowed and secured," which are to be deducted and excluded from computation in the account	334,101.02
Leaving	10,089,038.67
Quantity sold up to January 1, 1859	5,912,664.63
Residue of said lands	4,176,374.04

(Of this residue 2,292,766 acres have been disposed of under the swamp-land act and grants for railroads and school purposes up to January 1, 1859.)

The proceeds of the sales of the lands up to January 1, 1859, viz, 5,912,764.63 acres, amounted to		$7,556,568 05
The residue of said lands, viz, 4,176,374.04 acres, at 12½ cents per acre, amounted to		522,046 75
		8,078,614 80

From which sum the following deductions are to be made:

1. The cost of the survey and sale of the lands, viz, 10,423,139.69 acres, at 10 cents per acre	$1,042,313 96	
Amounts carried forward	1,042,313 96	8,078,614 80
128 Amounts brought forward	$1,042,313 96	$8,078,614 80

2. Payments and expenditures under the treaty, which are as follows:

Fifteenth article:		
Salaries of chiefs for twenty years	$12,921 25	
Pay to speaker of three districts for four years	354 66	
Pay for secretary for same period	550 00	

Outfit and swords to captains, 99 in number....	$4,930 56	
Pay to the same, at $50 per year, for four years.	19,604 25	
		$38,361 12
Sixteenth article:		
Removal and subsistence, per statement of Second Auditor.....	$813,927 07	
On same account, per additional statement made in this office for expenditures from 1838 to date.....	401,556 17	
Amount paid for cattle...	14,283 28	
		1,229,766 52
Seventeenth article:		
Annuity of $20,000 for twenty years..		400,000 00
Nineteenth article:		
Fifty cents per acre for reservations relinquished.....	24,840 00	
Amounts to orphans for reservations.....	120,827 76	
		145,666 76
Twentieth article:		
Education of forty youths for twenty years.....	217,260 73	
Council-house, house for each chief, and church for each district.....	9,446 75	
$2,500 annually for support of three teachers, for twenty years.....	50,000 00	
Three blacksmiths, sixteen years.....	38,988 86	
Millwright for five years.	3,050 00	
2,100 blankets	7,496 70	
Rifles, molds, &c., to each emigrating warrior.....	43,969 31	
1,000 axes, plows, hoes, wheels, and cards.....	11,490 20	
400 looms.....	7,193 53	
One ton iron, and two hundred weight of steel annuity to each district, for sixteen years.	8,051 15	
		396,947 23
Twenty-first article:		
Annuity to Wayne warriors.....		1,818 76
3. Scrip allowed in lieu of reservations, viz: 1,399,920 acres, at $1.25 per acre..		1,749,900 00

	Payments made to meet the contingent expenses of the commissioners appointed to adjust claims under the fourteenth article of the Choctaw treaty of 27th September, 1830.....	51,320 79	
	For various expenses growing out of the location and sale of Choctaw reservations, and perfecting titles to the same, including contingent expenses, such as pay of witnesses, interpreters, &c., incurred in executing the act of 3d March, 1837, and subsequent acts relative to adjusting claims under the fourth article of the treaty of 1830....	21,408 36	
129	For payments made for Choctaw account, being for expenses incurred in locating reservations under the treaty with said tribe of 27th September, 1830.....	19,864 00	
	Total amount of charges.....	5,097,367 50	
	Which, deducted from the proceeds of the land sold, and the "residue of said lands," at 12½ cents per acre....		5,097,367 50
	Leaves a balance due to Choctaws of.....		2,981,247 30

OFFICE OF INDIAN AFFAIRS, *March* 22, 1860.

XL.

On the 9th day of January, 1861, the claimant, by its memorial addressed to Congress, demanded payment from the United States of the amount claimed to be due to it under and by virtue of said award.

XLI.

Under the provisions of the act of the 2d of March, 1861, Indian appropriation act (12th Stats. at Large, page 238), there was paid to the claimant the sum of two hundred and fifty thousand dollars for and on account of its claim; that the bonds for the sum of two hundred and fifty thousand dollars, which were by the said act directed to be issued and delivered to the claimant for and on account of said claim, were never issued or delivered to the claimant, although the claimant, by its authorized delegates or agents, made requisition and demand therefor from the Secretary of the Treasury, on the 4th day of April, 1861.

XLII.

Nineteenth article claims.

The report of Major Armstrong (Finding IV), a commissioner appointed by the War Department to make investigation as to the claims of Indians for reservations under the 19th article, shows there were seventeen hun-

dred and sixty-three Choctaw heads of families who had, during the year 1830, from two to twelve acres of land in actual cultivation, with a dwelling-house thereon; but in granting reservations only three hundred and fifty of that class was recognized by the agents of the Government.

By the decision of the agents of the Government seven hundred and forty-eight persons became entitled to land under the cultivation classes to an aggregate of one hundred and forty-eight thousand nine hundred and sixty acres. There were ninety-eight of Choctaw heads of families who were adjudged to be entitled to fifteen thousand five hundred and twenty acres of lands, who never received a reservation of lands or compensation for the same. There were forty-five of Choctaw heads of families who received said reservations and relinquished the same to the United States; but the United States never paid to the said Choctaw heads of families any consideration for such relinquishments. The said forty-five Choctaw heads of families who were awarded reservations, and relinquished the same to the United States, were entitled to six thousand four hundred acres of the land thus set apart and dedicated to the use specified in the said article. There was reserved in said article one thousand two hundred and eighty acres of land to Jo-ho-ke-tubbee, but the said land was never reserved or set apart by the United States for his benefit. The quantity of
130 lands to which the said Choctaw heads of families and the said Jo-ho-ke-tubbee became entitled to by the adjudication of the agents of the United States and the reservation in said article to said Jo-ho-ke-tubbee, was twenty-three thousand two hundred acres, which, at the time they became entitled to the same, was worth the sum of $1.85 per acre.

XLIII.

On the 18th March, 1856, the memorial of the Choctaw Nation was referred by the Senate to the Committee on Indian Affairs, and the said committee, on the 15th day of February, 1859, submitted to the Senate a report on said memorial, which is designated as Senate Report No. 374, Thirty-fifth Congress, second session.

Conclusions of law.

Upon the foregoing findings, the court decides that the claimant is entitled to recover—

For claims under the 14th article of the treaty of 1830....	$417,656 00
For claims under the 19th article of the treaty of 1830 ...	$42,920 00
For land taken in fixing the boundary of the State of Arkansas and the Choctaw Nation	$68,102 00
For transportation and subsistence under the treaty of 1830.....	$51,993 00
For unpaid annuities	$59,449 32
For guns, ammunition, &c	$18,000 00
Total.....	$658,120 32
Defendants are entitled to a payment on said amount, under the act of 1861, of.....	$250,000 00
Leaving a balance due the claimants of.....	$408,120 32

131 X.—*Opinion of the court.*

WELDON, J., delivered the opinion of the court.

In this case the claimant seeks to enforce against the defendants a liability growing out of certain treaties between the Choctaw Nation on one side and the United States on the other. The claim made by the petition, and sought to be maintained by the evidence, in some of its particulars embraces a period much beyond the life of a generation; so that we are dealing with a subject-matter of dispute, historical in its character, involving a very large sum of money, and comprehending in its decision varied principles of law. The necessities of the case as a judicial proceeding bring before the court the widest range of investigation.

For nearly a century the parties to this record have been in antagonism; their very existence, geographically situated as they were, was an antagonism. The fact that one is the representative of civilized and the other of semi-civilized life is an antagonism, and in the spirit of that antagonism they have met in council in the executive and legislative branches of the Government, and now, for the first time in the history of their differences, they meet in the forum of the judiciary.

The ordinary jurisdiction of this court does not embrace the claim alleged by the pleading, but by special act of Congress the jurisdiction is enlarged; and, as was said, it is a high compliment to this court that its ordinary jurisdiction is enlarged, and that a case so important in its legal principles and so large in amount should be submitted to the determination of this tribunal.

We therefore approach the investigation and decision of the issues between these parties with a just sense of the responsibility incurred, and a full appreciation of the delicate trust confided to us in dealing with principles so vital in law, and interests so material to the rights of the litigants.

The record is most voluminous, embracing in its scope more than 2,500 printed pages of evidence, exhibits, and public documents; but in the discharge of our duty to find the facts upon which to predicate our decision, and the appellate jurisdiction of the Supreme Court, we have eliminated what we regard as extraneous and immaterial, bringing the compass of the case to such findings as will enable the appellate jurisdiction to understand the issues as developed by the proof.

132 This case being in excess of the ordinary jurisdiction of the court, we quote at length the act under which the claimant's petition was filed:

AN ACT for the ascertainment of the amount due the Choctaw Nation.

"Whereas the Choctaw Nation, for itself and on behalf of individual members thereof, makes claim against the United States on account of various treaty provisions which it is alleged have not been complied with: Therefore,

"Be it enacted by the Senate and House of Representatives in Congress assembled, That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon; power is hereby granted the said court to review the entire question of

differences de novo, and it shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of eighteen hundred and fifty-five; and the Attorney-General is hereby directed to appear in behalf of the Government; and if said court shall decide against the United States the Attorney-General shall, within thirty days from the rendition of judgment, appeal the cause to the Supreme Court of the United States; and from any judgment that may be rendered, the said Choctaw Nation may also appeal to said Supreme Court: Provided, The appeal of the said Choctaw Nation shall be taken within sixty days after the rendition of said judgment, and the said courts shall give such cause precedence.

"SEC. 2. Said action shall be commenced by a petition stating the facts on which said nation claims to recover, and the amount of its claim; and said petition may be verified by either of the authorized delegates of said nation as to the existence of such facts, and no other statements need be contained in said petition or verification.

"Approved March 3, 1881."

In order to understand the synopsis which is given of the petition in this opinion, it is necessary in this connection to call attention to a treaty made in 1855 between the nation and the United States, and the action of the Senate under and by virtue of the provisions of said treaty. So much of it as it is necessary to consider at the present is as follows:

"Whereas the political connection heretofore existing between the Choctaw and the Chickasaw tribes of Indians has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a readjustment of their relations to each other and to the United States;

"And whereas the United States desire that the Choctaw Indians shall relinquish all claim to any territory west of the one hundredth degree of west longitude, and also to make provision for the permanent settlement within the Choctaw country of the Wichita and certain other bands of Indians—for which purpose the Choctaws and Chickasaws are willing to lease, on reasonable terms, to the United States that portion of their common territory which is west of the ninety-eighth degree of west longitude; and whereas the Choctaws contend that by a just and fair construction of the treaty of September 27, 1830, they are of right entitled to the net proceeds of the lands ceded by them to the United States under said treaty, and have proposed that the question of their right to the same, together with the whole subject-matter of their unsettled claims, whether national or individual, against the United States, arising under the various provisions of the said treaty, shall be referred to the Senate of the United States for final adjudication and adjustment;

"And whereas it is necessary for the simplification and better understanding of the relations between the United States and the Choctaw Nation of Indians that all their subsisting treaty stipulations be embodied in one comprehensive instrument."

Following said preamble, as articles of said treaty, are sections XI and XII, as follows:

"ARTICLE XI. The Government of the United States not being prepared to assent to the claim set up under the treaty of September 27, 1830, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good

conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

"First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments
133 under the provisions of said treaty; and if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that a final settlement with them may be properly effected; or

"Secondly. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much?"

* * * * * * *

"ARTICLE XII. In case the Senate shall award to the Choctaws the net proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just, the settlement and payment to be made with the advice and under the direction of the United States agent for the tribe; and so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe shall, on their requisition, be paid over to them by the United States; but should the Senate allow a gross sum in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for and bound to pay all the individual claims as aforesaid, it being expressly understood that the adjudication and decision of the Senate shall be final."

In pursuance of the submission under this treaty the Senate, on the 9th day of March, 1859, passed and caused to be entered of record on its journals, as the result of its investigation, the following preamble and resolutions:

"Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians provides that the following questions be submitted for decision to the Senate of the United States:

"First, whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or,

"Secondly, whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much:

"Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the first day of Jan-

uary last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of $1.25 per acre; and, further, that they be also allowed twelve and a half cents per acre for the residue of said lands.

"Resolved, That the Secretary of the Interior cause an account to be stated with the Choctaws, showing what amount is due them according to the above-prescribed principles of settlement, and report the same to Congress."

It is alleged that in pursuance of the award made by the Senate under the treaty of 1855, the Secretary of the Interior caused an account to be stated with the Choctaws showing $2,981,247.30 due them for lands sold under the treaty of September 27, 1830; and that such finding was by the Secretary transmitted to Congress in June, 1860.

The principal treaty prior to that of 1855 was made on the 27th of September, 1830; and in order to understand the claim made by the petition, it is necessary that we should refer, also, to some of the more substantial provisions of that treaty, because on that as an alternative is based the right to recover.

In the fourteenth article of said treaty it is provided:

"Each Choctaw head of a family being desirous to remain and become a citizen of the States shall be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner, shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years
134 of age, and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands, intending to become citizens of the States, for five years after the ratification of this treaty, in that case a grant in fee-simple shall issue. Said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but, if they ever remove, are not to be entitled to any portion of the Choctaw annuity."

It is insisted that under this and other provisions of the treaty of 1830, with what followed in the conduct of the Government and the dealings of the parties, there is a justification in law and in fact for all that was allowed the claimants by the Senate award of the 9th of March, 1859, and that said amount should be increased because of mistakes made against the Choctaws.

Under the act giving this court jurisdiction, the counsel for the petitioner deemed it prudent to so allege its cause of action that while the claimant insisted upon the binding force and legal efficacy of the award of the Senate, if remitted to its original rights there could be a recovery under the legal claims of the Indians as they existed under the law and treaties prior to the making of the treaty of June, 1855.

In accordance with that theory of the petitioner's rights, it is alleged "that if your petitioner, by electing to bring this suit under the above-named act of Congress, ought in equity to be held to have waived the finality and conclusiveness of the award of the Senate herein named (which

petitioner expressly denies), yet your petitioner has not, by bringing this suit under said act or otherwise, waived the right aforesaid secured by said covenant, in Article XI, to demand that this court shall in this action, and as substituted in place of the Senate, adjust and by its decree secure to your petitioners the payment of the said claims and demands, taking into consideration all rights and equities growing out of all the dealings of the United States, as in this petition set forth, with said Choctaw Nation and the individuals thereof."

It is alleged that in pursuance of the rights guaranteed to individual Indians under the 14th section of the treaty of 1830, 1,585 heads of Choctaw families signified their intention to remain on their lands in Mississippi and become citizens of the United States, and, although that number substantially complied with all the terms and requirements of said article, and became entitled to a grant in fee, as specified in said treaty, yet but 143 actually received from the United States lands as provided by the provisions of said 14th section.

It is further alleged that the lands to which heads of Choctaw families were entitled, but which by the wrong of the defendants they did not receive, were sold by the United States, and were reasonably worth at the time of the sale the sum of $5 per acre.

Following these averments of the petition, it is further stated that, having failed to secure to the claimants their rights under the 14th article of the treaty of 1830, on the 23d day of August, 1842, an act was passed by Congress to provide compensation for the loss of the lands under said treaty, by providing for the issue of scrip to those entitled to lands under the treaty of 1830, which scrip so issued the Indians were to receive in full satisfaction for all rights secured to them by the treaty of said date. It is alleged that the agents of the United States, in the execution of the treaty of 1830, disregarded the letter and spirit of the 14th article and refused to permit the Indians to avail themselves of the benefit of the stipulations of the said article; and also that the rights secured to them under the act of 1842 were disregarded by the defendants in not delivering to them the scrip as provided for by the terms of said act,
135 but that, in consequence of the failure to deliver the same as provided for by the terms of the third section of said act, the same was worthless in their hands and was, by the wrong of the defendants, sacrificed by them in selling it at a mere nominal value.

Another cause of complaint, as averred by the petition, is a violation of the 19th article of the treaty of 1830. Said article is as follows:

"The following reservations are hereby admitted to Col. David Folsom, four sections, of which two shall include his present improvement and two may be located elsewhere on unoccupied unimproved lands. To I. Garland, Col. Robert Cole, Tippanahomer, John Pitchlynn, Charles Juzan, Johoke-betubbe, Eaychahobia, Ofehoma, two sections each, to include their improvements, and to be bounded by sectional lines, and the same may be disposed of and sold, with the consent of the President. And that others not provided for may be provided for there shall be reserved as follows:

"'First. One section to each head of a family, not exceeding forty in number, who during the present year may have had in actual cultivation, with a dwelling-house thereon, fifty acres or more.

"'Second. Three quarter-sections, after the manner aforesaid, to each

head of a family, not exceeding four hundred and sixty, as shall have cultivated thirty acres, and less than fifty, to be bounded by quarter-section lines of survey, and to be contiguous and adjoining.

"'Third. One half-section, as aforesaid, to those who shall have cultivated from twenty to thirty acres, the number not to exceed four hundred.

"'Fourth. A quarter-section, as aforesaid, to such as shall have cultivated from twelve to twenty acres, the number not to exceed three hundred and fifty; and one-half that quantity to such as shall have cultivated from two to twelve acres, the number also not to exceed three hundred and fifty persons. Each of said class of cases shall be subject to the limitations contained in the first class, and shall be so located as to include that part of the improvement which contains the dwelling-house. If a greater number shall be found to be entitled to reservations under the several classes of this article than is stipulated for under the limitation prescribed, then, and in that case, the chiefs, separately or together, shall determine the persons who shall be excluded in the respective districts.

* * * * * * *

"'The several reservations secured under this article may be sold with the consent of the President of the United States, but should any prefer it, or omit to take a reservation for the quantity he may be entitled to the United States will, on his removing, pay fifty cents an acre, after reaching their new homes, provided that before the first of January next they shall adduce to the agent or some other authorized person to be appointed, proof of his claim and the quantity of it.'"

It is insisted that the legal effect of this provision of this article was to reserve from the grant 458,400 acres of land, that being the amount which the maximum reservation for the different classes of persons enumerated in the article would produce. But it is alleged in the petition that instead of there being an assignment to 1,600, as contemplated by the treaty, there was an assignment to only 731 persons, making in the aggregate 123,680 acres instead of 458,400, as contemplated by the contract of the parties. The claimant insists that the difference between what it was entitled to receive under said article, and what in fact it did receive, is a just and legal claim against the United States.

It is also alleged that of the fifth class of said article, instead of being 350 cultivators, as contemplated by said article, there was, in fact, 1,763; that while the aggregate reservation of 458,400 acres was sufficient, yet the classification had the effect, as construed by the United States, to deprive the nation of the rights which, by the terms, it still held in the reservations, and for this item it claims the sum of $408,720.

The petition, as another and distinct cause of action, claims interest to the amount of $134,150 under the provisions of the act of March 3, 1845, making appropriation for the expense of the Indian department for the year ending June 30, 1846. It is alleged that the United States became and are responsible, under the provisions of said act, and up to the
136 passage of the act of July, 1852, to pay the sum of $305,551; that the land to which the reservers mentioned in the act of 1845 were entitled to was 697,000 acres, making an aggregate sum at the computation of the statute of $872,000.

The third cause of action charged in the petition is based upon the proceedings and award, as it is called, of the Senate, under the 11th and 12th

articles of the treaty of 1855. In this count of the petition it is alleged that the Senate, under the 11th and 12th articles of said treaty, adopted as a measure of compensation "just, fair, and liberal," as it was empowered and authorized by the express covenant and stipulation of the last mentioned treaty.

The finding of the Senate is declared on according to its legal effect; alleging that certain mistakes and inaccuracies have been made which, if corrected, as they should be, in order to conform to the judgment of the Senate, would increase the allowance of the claimants much beyond the amount found by the report of the Secretary of the Interior, without impairing the legal integrity or conclusiveness of the judgment of the Senate.

Connected with the latter allegation it is charged that the whole amount due the claimants for land sold, computed by the exact direction of the Senate award, is $8,413,418, as the net proceeds, from which deduct the amount of proper charges, $4,117,885, leaving a balance due the nation of $4,295,533. This amount was, as it is alleged, due at the time of the statement of the account by the Secretary at the time the report was made to Congress, as alleged in the petition. From that amount a deduction is allowed of $500,000, paid under the act of March, 1861, leaving a balance of $3,795,533, on which interest is claimed from the 9th of March, 1859, the date of the Senate award; and the further sum of $250,000 still due in bonds. The 27th specification of the petition alleges that there is now due the claimants the said sum of $3,795,533, with interest at 5 per cent., as the unpaid balance on the proper result as calculated by the award of the Senate.

The 28th specification alleges that by the undertaking of the United States, as expressed in the 15th article of the treaty of 1855, there was guaranteed to the Choctaw Nation the protection of the United States against domestic strife, invasion, and aggression; but that, in consequence of the inability of the United States to protect them, they became subjected to the jurisdiction and control of the so-called Confederacy, but that the United States, in 1866, reaffirmed its treaty obligations to them.

It is claimed in the 29th specification of the petition that from July 1, 1861, to July 1, 1866, there became due and payable to the claimants under various treaty stipulations made before July 1, 1861, the sum of $406,284.93, of which amount it is admitted the defendants have paid the sum of $346,835.61, leaving a balance due of $59,449.32, which sum, as it is alleged, the petitioner is entitled to recover, with the other amount demanded in the petition.

The petition, in the conclusion of the formal and specific allegations, states three accounts between the parties, founded upon different theories of the claimant. First, the award of the Senate, as the amount was determined and reported, with such liabilities as have originated since the date of the finding; second, the award of the Senate corrected from such errors and inaccuracies as it is alleged were made in ascertaining the amount due the claimant; and, third, the amount due the claimant in case the court ignores and disregards the award of the Senate, and the parties are remitted to such general rights as they may have prior to the
137 treaty of 1855, and such other liabilities as may have accrued since that time, unaffected by the action of the Senate under the articles of said treaty, and, finally, that the United States be declared a trustee,

holding the lands ceded to it by the treaty of 1830 in trust for the Choctaw Indians, and that an account be stated between the parties upon that theory of the relation between them.

It is also alleged as a distinct claim against the United States that in the establishment of the boundary between the lands of the claimants and the defendants, to wit, the eastern boundary of the Choctaw Nation and the western line of the State of Arkansas, the line was erroneously surveyed by the agents of the United States, and that in consequence of the error in said line the said claimant lost to its territory a large amount, to wit, 136,204.02 acres. And for that appropriation of the land aforesaid the claimant demands in this proceeding the sum of $167,896.57. Other small claims are made by the petition, which it is not material to notice in this connection.

To the case made by the petition the defendants have pleaded a general plea, denying all liability for any and all causes of action, and a special plea, alleging a release as to a portion of the claims embraced in this proceeding.

As we enter upon the investigation of this cause we are confronted by the inquiry, What is the spirit of the law in which we shall adjudge the rights, duties, and obligations of the parties?

It is insisted by the claimant that in passing upon any and all questions embraced in this record we must regard the defendants as occupying toward the claimant the delicate and responsible relation of guardian or trustee; and notwithstanding the claimant has the capacity to treat with the defendants, it is yet entitled to the consideration and protection incident to the relation of a ward of the Government.

If it be true that the same rules of law prevail as in the determination of the trust and responsibility of guardian, in the ordinary relations of life, a much more stringent liability would arise against the defendants than if they are recognized as mere contracting parties, having no greater obligation than such as originate from the terms of their treaty or agreement. In reply to this theory, it is contended by the Government that the claimant comes into this court in the character of an ordinary suitor, having against it all the technical requirements of its situation as an ordinary litigant.

Not only is the general law of the case a matter of very serious contention, but the statute giving this court jurisdiction is the subject of diverse and radically different construction. It is sought to be maintained by the petitioner that the action of the Senate, made in the submission of the treaty of 1855, has all the qualities of a common-law award, and is binding on the defendants and this court, unless from the evidence it is shown that a mistake has been made in calculating the results of the judgment of the Senate, or a fraud has been committed against the rights of the United States by the act of the Senate; that the abrogation of the decision of a competent tribunal is an act involving judicial power; and if the law conferring jurisdiction was intended to have the effect of annulling the adjudication of the Senate, it would be the exercise of judicial functions on the part of the legislature, which would be in violation of the Constitution.

Against this theory of the law, as deduced by the claimant's construction of the act of 1881, it is argued by the Assistant Attorney-General that by that act the award of the Senate is annulled and removed from

all consideration by this court; that it is worthless for every pur-
138 pose of adjudication; that the field of dispute is now open as though the Senate had taken no action in the premises; and that the legal effect of the act of 1881 is to remit the parties to whatever rights they had up to and before the making of the treaty of 1855. These two contentions embrace the utmost limit of favorable construction dictated to each side by the highest and broadest interest of either party.

The court is unable to agree with either extreme, and must, from the legal necessities of this case, assume an intermediate ground as the best theory, although such intermediate position may result in giving to one party the substantial advantages claimed by such party.

The legal effect of the award was made the subject of interpretation in this court at the December term, 1884, in the decision of a demurrer interposed by the defendants to the petition at that term. (19 C. C., .)

The court, in disposing of the demurrer, in relation to the award of the Senate, said:

"By agreement of the parties contained in the treaty this adjudication and decision was made final, and so was and is conclusive, unless the finality and conclusiveness have been set aside by the concurrence of both parties, since neither party alone could disturb it:

"In our opinion that has been done for the purposes of the present case. On one side Congress, representing the United States, passed the act of March 3, 1881, giving this court jurisdiction to try all questions of difference arising out of treaty stipulations with the Choctaw Nation. * * * On the other side, the claimant, by coming into court, submitting to its jurisdiction thus conferred, and filing a petition, has assented to the terms of the act throughout. The adjudication and decision of the Senate is, therefore, by the subsequent acts and agreements of the parties, not to be taken as final and conclusive in the trial of this case.

"It does not follow, however, that the action of the Senate will be wholly without force or effect under any circumstances of the case, that it cannot be given in evidence for any purpose, and that all reference to it in the petition must be disregarded and ruled out on demurrer. The act does not so provide. The jurisdiction conferred is general to try all questions of difference arising out of the treaty stipulations. Power is there granted to the court to review the entire question of differences de novo. One of the questions of difference may be whether the decision of the Senate was warranted by the facts. To review that question we must have the action of the Senate before us. * * *

"Either party may put in evidence that adjudication, and if not controverted it may present the principles, as far as it goes, upon which our final decision will rest; but if controverted, we shall consider whatever facts and arguments may be offered in relation thereto."

It will be seen that the court, upon the preliminary question, purposely refrained from deciding the exact legal force and effect of the award, reserving that question to the ultimate decision of the cause; but sufficient is indicated in the opinion to define and develop the relation of the action of the Senate to the present proceeding.

The effect of the act of 1881 was to remove from the jurisdiction and consideration of this court, as toward the adjudication of the Senate, the technical law of estoppel, and yet to preserve within the jurisdict on the decision of the Senate to be considered by the court as it might determine.

The language of the law is: "Power is hereby granted to said court to review the entire question of differences de novo, and it shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of 1855."

While we have duly considered the very able arguments made and briefs filed by counsel for the claimant, and have examined all the authorities cited by them to sustain the decision of the Senate in the legal sanctity of a common law award; and while we find as facts that (Finding XXXVII) the consideration of the Senate "was full, fair, and impartial; and that its adjudication as made under said article was not influenced or affected
139 by, and was in no way or degree the result of, any fraud, corruption, or partiality; and there is no evidence tending to show that it was the result of surprise or mistake on the part of the Senate or any member thereof," we must hold that under the peculiar provisions of the act giving us jurisdiction, as we have held in substance on the demurrer, that the sanctity of the adjudication of the Senate has been destroyed by the law of our jurisdiction; and that the parties are remitted to their legal rights, as they exist unaffected by the action of the Senate. It is not necessary to discuss and determine the legal effect of the adjudication of the Senate in the abstract; the fact that the petitioner comes into this court affects its claim under the award with all the provisions of the act of the 3d of March, 1881, without which it would have no standing in court; and as to our powers and authority said act is the paramount law of this case.

In the adjudication of this most extraordinary controversy we are not acting as an arbitration or commission, but as a court, having no policy to subserve, and no power to exercise beyond the domain marked by the letter and spirit of the law.

The court, upon the question of the award in the decision of the demurrer, said:

"Either party may put in evidence that adjudication, and if not controverted it may present the principles, as far as it goes, upon which our final decision will rest; but if controverted we shall consider whatever facts and arguments may be offered in relation thereto."

There is no claim upon the part of the Government that the Senate made a mistake in fact, on the theory which is assumed; nor is it pretended that any motive other than the highest consideration of justice actuated that distinguished body in arriving at the conclusion it did, as shown by the findings; but that the legal right of the parties were misapprehended by the action of the Senate, and that in the exercise of its power under the treaty of 1855 it assumed functions of policy unauthorized by the rule of law which was to govern its adjudication by the submission under that treaty.

It would have been a strange and melancholy reflection on our political condition, if any other position than that of the most respectful consideration of the purity and integrity of the Senate had been taken by the law officer of the Government, or shown by the findings of this court. No effort was made to attack the award upon any other ground than that it applied principles of political policy rather than rules of judicial justice in the decision of the controversy as required by the nature and character of the submission.

But, in legal contemplation, the same Senate which made the award in favor of the claimant, and on which is predicated to a large extent the present action, in conjunction with the more popular branch of the Government, has legislated for this court in the act of 1881 by providing—

"That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation and render judgment therein. Power is hereby granted to said court to review the entire question of difference de novo; and it shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of 1855."

In view of the language of the act of 1881, in defining the powers of this court with reference to the action of the Senate, the most that can be said in favor of the award is that it may be considered by the court subject to such objections to it as may arise either from the facts found by the court or the law of the case, and that such facts and law are not affected to the prejudice of the defendants by the award.

140 It is insisted by counsel for the claimant that the decision of the Senate cannot be disregarded by the court unless "it is proved to have been the offspring of fraud, corruption, or flagrant partiality;" and many authorities, both of cases and distinguished authors, are cited in support of that proposition. We have not found any of the facts cited in the position of counsel against the award of the Senate; and in the absence of the peculiar provisions of the act of our jurisdiction we would yield a most cordial assent to the soundness of the proposition asserted by counsel.

It is true that the treaty of 1855, by the twelfth article, provides "it being expressly understood that the adjudication and decision of the Senate shall be final;" but the act of 1881, which the claimants have acknowledged by bringing this suit, provides in effect that the decision of the Senate may be disregarded by this court, and all questions of differences arising out of the treaty stipulations may be inquired into de novo.

By the act of the claimant in coming into this jurisdiction under the law of 1881, the finality of the award under the treaty of 1855 became subordinated to the jurisdiction of this court, and opened the field of controversy anterior to the action of the Senate. This court, with reference to the award, is not sitting as a court of appellate jurisdiction, to pass simply upon technical and common-law objections to the decision of the Senate, but as a court of unlimited jurisdiction over all questions of difference between the parties growing out of the treaty stipulations.

Having determined the question of the legal character of the result of the adjudication of the Senate, it becomes material to inquire into the spirit of the law in which shall be adjudged and determined the rights of the parties independent of the action of that body.

In the eleventh article of the treaty of 1855, in speaking of the Indians and the disposition of the United States towards them, it is provided "that their rights and claims against the United States shall receive a just, fair, and liberal consideration," and while in this proceeding we do not disregard the equitable claims of the Indians in so far as they are supported by the law and reasonable inference, we have not been able to construe that provision of the treaty into the broad claim of right asserted by the contention of the claimant.

The words "claim" and "rights," as used in the treaty, must necessarily mean to us such claim and such rights as are dependent upon a liberal construction of the Indians' claim, founded upon law, aside from any policy which other Departments of the Government might have the power to exercise towards the claimant. We are not left to the broad field of "natural justice," exercising a jurisdiction of discretion above and beyond he limit of legal right. One of the provisions of the treaty of 1830 is—

"And further it is agreed that in the construction of this treaty whenever well-founded doubt shall arise it shall be construed most favorably towards the Choctaws." (Article 18th, 7 St. L., 338.)

This exact form of expression is not found in the treaty of 1855, but its spirit is contained in the words "just, fair, and liberal."

Justice and fairness are presupposed in all judicial proceedings, as thence proceeds the sanctity of all law, and the binding force of all judgments. Without them the sessions of courts would be a legal mockery. The word "liberal" cannot enlarge the jurisdiction of this court in the recognition of claims unsupported by legal right, and the only efficacy which can be given to it is in the application of the spirit of the 18th article of the treaty of 1830. In the solution of questions of facts involving
141 varied results, and in the construction of treaties, agreements, and statutes, we have endeavored to give to the claimant the benefit of a construction most favorable to it.

The relation which the parties sustain toward each other has been the subject of no little discussion by counsel, as determining the rules of law applicable to a proper decision of the question at issue. It is claimed that this is a suit with a ward on one side and a guardian on the other; and, although this is an action growing out of the provisions of agreements in the form of treaties, in legal essence it partakes of the character of a proceeding to enforce a trust, and the obligations of a fiduciary relation.

Many cases are cited by counsel for the claimant to sustain the theory that in this proceeding the Choctaw Nation, both in regard to its national rights and as the representative of individual rights, is to be regarded as a ward of the defendants.

In the case of Worcester vs. State of Georgia, 6 Pet., 652, it is said "The language used in treaties should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than the plain import as connected with the tenor of the treaty, they should be construed as used in the latter sense.

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"How the words of the treaty were understood by this unlettered people rather than in their critical meaning, should form the rule of construction. The question may be asked, Is no distinction to be made between a civilized and savage people? Are our Indians to be placed upon a footing with the nations of Europe with whom we have made treaties?

"The inquiry is not what station shall be given to the Indian tribes in this country, but what relation have they sustained to us since the commencement of our Government? We have made treaties with them, and are those treaties to be disregarded on our part because they were entered into with an uncivilized people? Does this lessen the obligation of such treaties? By entering into them have we not admitted the power of this people to bind themselves and impose obligations on us?

So in 5 Wall., page 737:

"Rules of interpretation favorable to the Indian tribes are to be adopted in construing our treaties with them. Hence a provision in an Indian treaty which exempts their lands from "levy, sale, and forfeiture" is not, in the absence of an expression so to limit it, to be confined to a levy and sale under ordinary judicial proceedings only, but it is to be extended to levy and sale by county officers for non-payment of taxes."

By an examination of the reports of the Supreme Court from its earliest decisions to the present time, the opinions in those two cases, the first by Chief Justice Marshall and the last by Justice Davis, afford the strongest expression of judicial interpretation in favor of the Indians, and they fall far short of holding that the rules of law as applicable to controversies between guardian and ward are to prevail in suits between the United States and the Indian tribes.

The rules to be deduced from the sources of proper and authoritative information in relation to the rights of the parties are that doubts are to be resolved in favor of the Indians; that they are not to be prejudiced by mere technical construction and that words of doubtful import are to be taken most strongly against the United States. In the light of this law have we adjudged the rights of the claimants, both in the finding of facts and the application of legal principles in our conclusions of law.

Having determined some of the general principles which are to control in this case, we now consider in detail the various claims made by the petition and contended for from the evidence, irrespective of the award of the Senate.

The findings are necessarily lengthy, made so by the absolute requirements of the case, and from the very earnest contention of the
142 parties with reference to some points, which without such contention would have been omitted. In finding one the negotiations which resulted in the treaty of 1830 are given for the reason that the Government insisted that the extent of the claim as to the number of claimants under the fourteenth article was much in excess of what they had a right to demand under said article. And so with reference to the negotiation preceding the making of the treaty of 1855; those negotiations, became material as showing the character and extent of the unsettled claims contemplated by the treaty of 1855. The general rule is that all antecedent negotiations become merged in the treaty or agreement, but it may be important to show what was contemplated as a subject-matter in making the treaty of 1855.

Passing beyond the award of the Senate, in substance the claims contended for in this proceeding are—

1st. The net proceeds of the sale of the lands ceded by the treaty of 1830, after deducting the expenses incident to the survey and sale of the lands.

2d. Claims of individual Choctaw heads of families who brought themselves within the requirements of the fourteenth article, but were deprived of their right by the fraud and wrong of the agents of the United States, under the treaty and act of 1842.

3d. Claimants who failed to receive compensation under the nineteenth article of the treaty of 1830.

4th. Compensation for land appropriated by the United States in the

establishment of the boundary between the Choctaw Nation and the State of Arkansas.

5th. Arrearages of annuities.

6th. The bonds which were to have been issued under the act of 1861. (12 Stat. at L., 238.)

7th. Interest claim under the act of 1845. (5 Stat. at L., p. 777.)

8th. Subsistence and removal claim under the sixteenth article of the treaty; and compensation for a principal chief under the fifteenth article.

9th. For guns, ammunition, &c., as provided for in the twentieth article of the treaty of 1830.

We will consider them in the order stated. The net proceeds of the lands ceded by the treaty of 1830 was the principal claim made by the petitioner at the time it commenced the negotiations preparatory to the treaty of 1855; and this claim is based upon the character of the title which it held, as it is alleged, in the lands ceded by the treaty of 1830 and the provisions of the eighteenth article of said treaty, which are as follows:

"The United States shall cause the lands hereby ceded to be surveyed, and surveyors may enter the Choctaw country for that purpose, conducting themselves properly, and interrupting none of the Choctaw people. But no person is to be settled within the Choctaw Nation or the lands sold before the Choctaw removes; and for the payment of the several amounts secured in this treaty the lands hereby ceded are to remain a fund pledged for that purpose until the debt shall be provided for and arranged. And, further, it is agreed that in the construction of this treaty, wherever well-founded doubt shall arise, it shall be construed most favorably toward the Choctaw."

By finding one, and the history of the removal of the Choctaw people from the State of Mississippi, it is very clear that the object the United States had in making the treaty of 1830 with the Choctaw was to get possession of that large district of country then owned by the Indians, for the purpose of occupation and settlement by the white people emigrating to the State of Mississippi; and the question of price was immaterial, so that the United States got possession of the country and secured to the Indians what it was believed would be a better location for them west of the Mississippi. The rights of the parties must be settled, not from the character of the title which the Indians held in the lands under the treaty of 1825, but from the terms used in the treaty of 1830, because in that, for the time being, became merged the obligation and rights of the parties.

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The claim of the net proceeds was insisted upon, more on the ground of equitable right than strict legal requirement, at the time the treaty of 1855 was made, and if it can be sustained by the canon of construction recognized by the treaty of 1830, the claimant should recover upon that theory in this proceeding.

The latter part of the eighteenth article provides:

"And for the payment of the several amounts secured in this treaty the lands hereby ceded are to remain a fund pledged for that purpose until the debt shall be provided for and arranged."

It is insisted that a proper construction of this clause of the treaty is, that the debt mentioned is the sum due from the United States of the proceeds of the lands, after the deduction of such expenses as may have

been incident to the survey and sale of the lands. That the legal effect of the treaty of 1830 was to create the United States a trustee of the proceeds of the land, entitled to no other deductions than such expenses as may have been incurred in the execution of the trust, and such payments as have been made to the nation of the proceeds of the trust property.

We have already held that the legal relation of trustee and cestui que trust did not as a matter of law exist between the parties; and unless the terms of the treaty of 1830 established that relation with reference to the subject-matter of this claim, the petitioner must be held in this court as bound by the same rules of law as are incident to other litigants, subject to the exceptions heretofore suggested.

In the exercise of the most liberal rules of construction and interpretation, we can find no authority in any article of the treaty of 1830 for giving to the claimants the net proceeds of the land ceded to the United States by that treaty; and while such a right, in all fairness, might have been provided for, we can recognize only those actually secured by the provisions of the treaty. The term "debt," as used in the eighteenth article, is an embodiment of the several amounts specifically secured in the treaty.

Much discussion was had in the trial of this cause as to the proper construction of the treaty in relation to the claim of the petitioner under the fourteenth article of the treaty of 1830, the United States contending that the extent of the claimants as to number under that article, as shown by the findings, was a perversion of the purposes of the treaty, which purpose was to get possession of the territory and extinguish the substantial settlement of the Choctaw Nation as a people in the State of Mississippi. We hold that by the general provisions of the fourteenth article every Choctaw family that complied with the requirement of said article had the right to select and appropriate under said article; and that such right did not depend upon the number applying, but upon the question whether each applicant had the qualification prescribed by the treaty, and whether, within the time limited by law, such applicant complied with the prescribed conditions of the fourteenth article in such manner as was best calculated to enforce that right, on the part of the Indian, consistent with a reasonable protection to the United States against fraud and imposition.

144 We will now consider briefly the facts connected with the claim of the petitioner because of an alleged disregard of the fourteenth article of the treaty of 1830. Said treaty was made on the 27th of September, 1830, and ratified by the United States on the 24th of February, 1831, so that the limitation of six months within which claims were to be filed expired on the 24th of August.

On May 21, 1831, the War Department (finding 2) gave instructions to the Indian agent in the State of Mississippi as to registration under said article. The tenth finding shows the manner in which the agent discharged the duty of the position, which was to make selections for heads of families, under the fourteenth article, under such reasonable rules and regulations as might protect the interest of both parties.

It is very clear that the purpose of the agent was to discourage the selections of lands under said article, and the policy of Indian emigration, which was the great object of the treaty on the part of the United States, was maintained by the agent of the Government in the manner in which he executed the treaty in the matter of the fourteenth article.

The agent's office was not opened for business until the latter part of June, 1831; and when it was, his conduct was a practical disregard of the rights of the Indians. The six months closed on the 24th of August, in which, by the terms of the law, the parties were compelled to make their selections, and during that time sixty-nine heads of families had complied with the requirements of the treaty, as shown by the registration returned to the War Department. If the law had been faithfully executed we have no doubt a much larger number than that would have brought themselves within the requirements of the provisions of the treaty.

In June, 1833 (finding 5), Mr. Martin was appointed to make selections of the lands granted under the fourteenth, fifteenth, and nineteenth articles, who was directed to be governed in his selections as to the fourteenth article by the registry returned by the former agent.

The locating agent soon discovered that a wrong had been perpetrated by the selecting agent, and the result was that upon the suggestion of the fact to the Department, a register of the claims of persons who had been deprived of their rights in the registration was made, and in December, 1834, the same was transmitted to the Secretary of War, showing a list of 580 persons who had made or attempted to make selections, but were not permitted to do so by the selecting agent (finding 7).

The report of Mr. Martin brought to the attention of the Government at Washington the mode in which the treaty had been executed with reference to the reservees under the fourteenth article, and upon the basis of that information was passed the act of 1837 (5 Stat. L., 180), and the act of 1838.

It is not necessary to state in detail the conduct of the agent Ward, as shown by the findings; it is sufficient to say that it was a practical disregard of the rights of a large body of the Indians, who as the heads of families, sought to communicate to the Government their selection of lands under the fourteenth article, which by the history of its adoption is shown to have been a substantial provision of the treaty in favor of the individual members of the Choctaw Nation.

In pursuance to the act of 1837, Messrs Vroom, Pray, and Murry were appointed commissioners (finding 9), and were instructed by the Department at length on the subject of their duties. It will be seen by the ninth finding that the commission appointed under the act of 1837
145 and 1838 afforded every facility to the Indians to establish the fact that they had made or attempted to make known to the officers of the Government their intention to remain pursuant to their right, under the treaty, and if it is said that the first agent employed by the United States was hostile to the rights of the Indians, it must be said of the commissioners under the acts of 1837 and 1838, consistent with a faithful discharge of their duty, they had toward the Indians the kindest feelings.

The number of claimants before the board was 1,349; that number included 261 particularly reported while other claims were to be filed at the time of the adjournment of the board. The commission reported on 261 cases; 165 approved, 65 rejected, 26 recommended to the favorable consideration of Congress, and 5 unfinished (finding 10).

Following the commission of 1837 came the commission under the act of 1842 (5th Stat. L., p. 513).

The commission appointed under said act was instructed in its duties on the 24th of October, 1842, as will be seen by reference to Finding XI. Said act was intended to pursue and more fully execute the policy adopted by the acts of 1837 and 1838, as to claimants under the fourteenth article; and by its provisions it embraced claims under the nineteenth article of the treaty.

An examination of the findings in reference to the commissioners under the act of 1842 will show that, like the commission under the former acts, they had, consistent with the legal interest of the United States, a disposition to deal with the claimants in the broadest spirit of liberality and fairness. They served no policy save the examination of claims according to rules best calculated to ascertain the truth.

For some reason no claim was made as to reservees under the nineteenth article, and their examination was confined exclusively to claims under the fourteenth article. They were particularly instructed as to their duty, and every facility was afforded to them to make a full, thorough, and impartial investigation, through and by the best means of ascertaining the truth.

On June 16, 1845, the commission, under the act of 1842, reported "that all the Choctaw claims arising under the fourteenth article of the treaty presented in correct form had been fully determined, some few cases not adjusted for want of legal requisites" (Finding XII).

Findings show that the whole number of heads of families making application for and receiving land was 143, by the registration of Ward, as amended by the addition of other names and the report of commissioners appointed under the act of 1842. The number who successfully established their right and who did not receive land out of the reservation was 1,150, the number who failed was 292, making in the aggregate 1,585 claimants.

The examination before the different commissions was in the form of a judicial investigation, the attorney of the United States often appearing; and the claimants represented by agents and counsel presumed to be competent to defend every interest and to protect every right of the applicant.

It is insisted that the act of 1842 imposes conditions not required by the treaty, and many authorities are cited to prove that it is not within the power of Congress to abridge or restrict a right to enjoy property guaranteed or secured under treaty stipulations. We will consider that point in another connection.

As incident to the result of the act of 1842, Congress passed the act of the 3d of March, 1845 (5 Stat. L., p. 777), providing that one-half
146 of the scrip should not be delivered; but that the same should be funded at $1.25 an acre, to bear interest at 5 per cent.; and again, on the 21st of July, 1852, passed an act (10 Stat. L., 19), providing for the payment of the amount funded by the act of 1845 upon the condition "that the final payment and satisfaction of said award shall be first ratified and approved as a final release of all claims of such parties under the fourteenth article of said treaty by the proper national authority of the Choctaw in such form as shall be prescribed by the Secretary of the Interior."

Under the provisions of the act of July 21, 1852, the Choctaw Nation received the sum of $872,000, being the amount of the land funded under the act of 1845, and executed by its proper authority the instrument set forth in the findings. To the special plea of the Government, counting upon said instrument as a release, the claimant filed a lengthy replication, the substance of which is, that the release was not the voluntary act of the Choctaw Nation, nor of the heads of the families entitled to reservations under the fourteenth article of the treaty of 1830; that both before and after the law of 1852, and the execution of the release under it, the nation and the individuals affected by the wrong incident to the execution of the fourteenth article had asserted a claim to a compensation because of the violation of the rights of the Indians under said article.

Considered as a mere pleading it legally asserts that the matters set forth in the special plea are no bar, because in law they were not the voluntary acts of the claimant.

The replication does not assume to fulfill the requirements in every particular of a replication of duress, as required at common law, but interposes as it is claimed against the plea, such general allegation of fact as in this case, because of its legal peculiarities, destroys the legal effect of the plea.

Having stated briefly as possible the leading facts of the record bearing upon the individual claims under the fourteenth article, it remains for us, by the application of what we regard as legal principles, to determine the claim of the petitioner upon that branch of the case. If the rights of the parties and those whose claims were allowed existed in fact and law as they did upon the expiration of the agency of Ward, if the individuals had disregarded the propositions of adjustment contained in the several acts passed by Congress to ascertain the extent of their rights, if no interest had been accepted, if no money had been received in payment of a perpetual annuity, which was the result of the fund arising from the proceeds of the lands accruing under the treaty of 1830, the situation of the case would, in law, be radically different; and the question is, can we disregard what has been done by the parties since the close of the six months' limitation under the treaty, allow what the heads of families would be entitled to, according to its then value, deducting what has been paid by the defendants?

If this were a proceeding between parties having nothing but the rights of individuals in a court of common law jurisdiction, there would be no serious questions for solution; but it is argued that the peculiar relations of the parties create new and greater obligations, and upon that theory the replication to the special plea is framed without the ordinary requirement of the allegation of such facts as would constitute legal duress. We have already indicated the general principles of law with reference to the parties, that they are in this jurisdiction as ordinary litigants with rules of interpretation and construction in favor of the claimant.

There is nothing in the record to show what agency, if any, the
147 Choctaw Nation had in the passage of the different laws from 1837 to 1852; but it does appear that through agents and attorneys, parties accepted such recognition of alleged rights as Congress saw fit to give them in the various laws passed upon the subject-matter of their claims under the treaty of 1830. As has been said, the character of the investi-

gation under the various acts, was similar to a judicial investigation, each claimant appearing not in the weakness of his ignorance, but represented by agents and counsel competent to defend every right incident to the applicant under the laws of the United States. The findings show that under the act of 1842 the commission remained in session long enough to dispose of the business contemplated by the purpose of the act, and those who applied under the act of 1842, and successfully sustained their claim, either got the land they were entitled to or received scrip in lieu of such reservations, and participated in the fund of the act of 1845.

But it is insisted that the legal effect of the proceedings under the act of 1842, and the release executed on the 6th day of November, 1852, have been annulled by the provisions of the treaty of 1855.

There is no express waiver in said treaty of the proceedings under the act of July, 1852, and the provisions of that treaty proposing a settlement by the arbitration of the Senate does not necessarily destroy the legal effect of any act of the parties, and the only thing which in our inquiry, as it may be de novo, that is affected by direct law is the award of the Senate.

It is said that a defense under the release is repugnant to the provisions of the treaty of 1855, because such a defense would be abhorrent to the spirit of fairness and liberality expressed by the terms of the eleventh article of the treaty of 1855.

We have already discussed at some length the judicial force of these words in the present suit, and it is unnecessary to enlarge upon what we have in another connection said upon that subject. The recognition of the legal effect of what the claimant did under act of July, 1852, does not violate the justice, fairness, and liberality of the treaty of 1855, unless the parties intended to supersede the legal effect of that act.

The release under the act of 1852 was executed by the proper authorities of the Choctaw Nation, and the findings do not show that in accepting the payment of the $872,000 such authorities in any way were induced to accept the same by any misrepresentation or illegal procurement of the defendants. It may have been that the necessities of the nation made it almost imperative that the appropriation of the defendants should be accepted; but the condition and necessities of the parties have never been held sufficient in law to annul and abrogate their agreements. (French vs. Shoemaker, 14 Wall., 314.) The payment of the $872,000 was to be made on the condition that the nation execute a release for claims under the fourteenth article, those claims being the original consideration of the agreement to pay in the form of an annuity, and if the nation did not desire the payment of the annuity itself it should have refused to accept the same on the conditions provided for by the act of 1852.

The same authority that made the treaty of 1830, and all other treaties commencing in 1782, and which, under the provisions of the act of 1881, brings this suit executed and delivered through its legally constituted authorities the release of November 6, 1852; and if that instrument, with what preceded it in the history of the parties thereto in relation to the same subject-matter, is to be disregarded it must be so announced by a
148 distinct act of legislation. It is not for courts to discuss and determine questions of policy, they have none, and the best and highest function they perform is to apply the law as it may exist.

If by reasonable intendment we could assume that the treaty of 1855 destroyed in law the legal effect of what the parties did under the various acts of Congress, we would not hesitate to open the whole question of the liability of the Government, because of the manner of the execution of that portion of the treaty of 1830 which provided for individual Indians; and were it not for the effect in law of what the parties did in relation to grievances of that character the result of this cause might be very different.

In this proceeding the claimant asserts no other rights than those dependent upon contract relations, and if any other were asserted the theory of such claim would be in direct conflict with the letter of our jurisdiction, because we are restricted to questions of differences arising out of "treaty stipulations." We must consider the legal status of the parties as we find it by the force and effect of what they did. The acceptance of the annuity under the act of July 21, 1852, and the execution of the instrument set forth in the twenty-third finding, are the acts of the constituted authorities of the Choctaw Nation, and we find no warrant in anything said in the treaty of 1855, or in the law of our jurisdiction, to justify us in disregarding the legal effect of that instrument.

Under the act of 1842 there was issued to the 1,150 families whose claims were favorably reported by the commission, scrip aggregating 700,000 acres of land, which was, as it is alleged, a sacrifice by the Indians, because the same was not delivered to them at a place where it could be used, and that in consequence of the mode of delivery the reservees realized only the sum of $118,400, which being added to the $872,000 funded under the act of 1845, made the amount received $980,400. It is insisted by the claimant that in consequence of the refusal of the Government to deliver the scrip in the State of Mississippi the reservees were deprived of benefits of an opportunity to sell the same and were compelled to dispose of it at a nominal price.

The statute of 1842 provided that the scrip should be delivered under the direction of the Secretary of War, through such agent as he might select; not more than one-half of the scrip to be delivered until the removal of the Indian to the Choctaw territory west of the Mississippi River.

The Secretary of War declined to issue any portion of the scrip until the removal of the reservee, and because of such refusal the claimant alleges that the interest of the Indian was sacrificed—the scrip becoming comparatively worthless. The findings do not show that at the place where the scrip might have been delivered there was a market differing in any substantial particular from the Choctaw country. This demand being connected with the fourteenth article claim, according to the effect given to the statute of 1852, and the release executed by the claimant, became merged in the adjustment represented by the instrument executed on the 6th of November, 1852.

Many rights of the Indians can be considered under the treaty of 1855 by giving to the release of November, 1852, the full force claimed for it by the Government, and its recognition does not defeat the purpose of the treaty.

The Supreme Court has held that the United States, by subjecting themselves to the jurisdiction of this court, became subject to the same rules of responsibility as incident to an individual, and it may
149 be said that they are entitled to the corresponding barriers of protection. (The Floyd Acceptances, 7 Wall., 666.)

But while we concede to the release the legal effect of discharging the liability of the Government as to a class of claimants under the 14th article we are not disposed to extend it by implication or construction. The Government is entitled to rights under it only in so far as by its letter and purpose it bars the claims of the Indians. The fund provided by the act of 1845 represented the individual claimants who had successfully maintained their rights to reservations before the commission provided by the act of 1842. Those whose claims were rejected never became recipients of the fund provided by the annnity of 1845, and in dealing with that fund, after its creation, the Choctaw Nation represented only the 1,150 families whose reservations became a part of the $872,000; the legal effect of the act of July 21, 1852, and the release executed in pursuance to its provisions, was to settle claims and rights incident to those who were represented in that fund. The act recites that "the Secretary of the Interior be, and he is hereby, directed to pay said claimants the amount of principal awarded in each case, respectively;" and the release concludes, "as a final release of the claim of such parties."

The 13th finding shows that the commissioners appointed under the act of 1842 rejected 292 claims; and it is insisted that these rejections were in consequence of the condition imposed by the third section of the act of 1842, in requiring the claimant to show that on the 27th of September, 1830, he had an improvement "in the then Choctaw country, and that having and owning an improvement at the place and time aforesaid, did reside on the identical improvement or a part of it for the term of five years continuously." One of the questions of fact connected with the ajdustment of the findings was to determine from the evidence the probable number who were rejected by the board in consequence of the conditions prescribed by the act of 1842. We have, as is shown in the latter part of finding thirteenth, determined that the heads of families rejected by the conditions of the act of 1842 would aggregate 225,760 acres.

The fourteenth section of the treaty of 1830 gave to each Choctaw head of a family the right to a reservation upon complying with certain conditions; upon such compliance his right to a reservation was complete; and we do not find, among those conditions, the obligation of having an improvement on the selected reservation before the 27th day of September, 1830.

That portion of the treaty which was simply directory as to the mode in which the location of the reservation might be made, with reference to the improvement, became, by the requirement of the act of 1842, a condition precedent to the right of reservation, and imposed upon the Indian obligations bevond the requirement of the treaty.

The authorities are many that the terms of a treaty cannot be changed or affected by the act of one party to the prejudice of the other, and unless the fact that the Indians, whose applications were rejected by the board, consented to the impositions of new conditions, they have a present right to insist, through the claimant, upon the letter of the treaty. (Mitchell et al. vs. United States, 9 Pet., 711, 749, 755; United States vs. Brooks, 10th Howard, 460; Crews vs. Burcham, 1 Black, 356; Eastern Band of Cherokees, 20 C. Cls., p. 449.)

The facts do not show that, as to the rejected claimants, the nation rec-

ognized in any way in its capacity as a nation the proceedings
150 under the act of 1842, and it was only by the individual acts of the Indians that an investigation was made before either commission.

It is insisted that by the presentation of claims under the act of 1842, even though it did impose conditions not authorized or required by the treaty, the rights of the rejected reservees became forfeited, and that they are estopped by the finding of the board.

The law does not favor estoppels, forfeitures, and penalties, and will not recognize or enforce them unless in clear and unquestionable cases. Estoppels are not favored defenses when the technicality cannot be subordinated to its equity. (Andrews vs. Lyons, 11 Allen, 349; Lousenburg vs. Depew, 28 Barbour, 44; Waters appealed, 35 Penn. St., 523; Babcock vs. Pary, 8 Ohio St., 270; State vs. Pepper, 31 Ind., 78.)

The parties to the treaty of 1830 are so different in their character that what may be expected of one in the protection and recognition of its rights may not be demanded of the other. The commission of 1842 was the only way the Indian could reach the Government for a recognition of his rights as a reservee, and he had to take such terms as to the mode of his appeal as was given to him for the time being.

The board decided as to persons not having an improvement and residence according to the requirements of the act of 1842, there was no remedy in that act, and the legal effect of such finding was to leave to the Indian such rights as he may have had under the treaty of 1830. The board of 1842 had no right to consider a claim unless it had the superadded condition of the 3d section of the law of 1842, so that a party might have had all the qualifications required by the treaty and yet be without remedy within the jurisdiction of the board of 1842. Congress said by the terms of the law, We will have considered only those cases of Choctaw heads of families who had, at the date of the treaty an improvement on the reservation, and who continuously resided on the same five years after the 24th of February, 1831.

It is not necessary to discuss any other condition of the act of 1842, for the reason that if it be true in law, as we have assumed, that the requirement of improvement imposes limitation of rights not authorized by the treaty, and that a submission under said act did not bind the individual Indian whose claim was rejected, the other conditions become immaterial for the purpose of the argument. The act of 1842 required a continuous residence on the improvement of the reservee for five years, from the 27th of September, 1830; and without that continued residence the board was required to reject the claim. A residence of five years was not a condition precedent to the right of reservation, and only changed the character of the grant into the highest possible estate which can be held in lands; but before that estate attached to the reservee he had the right of possession and perpetual enjoinment. Besides his very failure to reside may have been the fault of the Government to protect him according to the requirements of the treaty. Upon the facts found by the court on this branch of the claim the reservees, whose rights were defeated by the provisions of the act of 1842, were entitled to 225,760 acres of land which, at the time their right, was worth the sum of $417,656.

We will now consider the claim of the petitioner under the nineteenth article of the treaty of 1830.

By that article certain reservations are made to individuals, eo nomine, and to four distinct classes of persons, the classification of a person depending on the amount of land in cultivation at the time of the treaty.

Although by the act of 1842 the commission had full power to
151 adjudicate the rights of parties under this article, no claims were presented to the commission, and in the absence of such presentation it may be presumed but few existed.

In April, 1831, Major Armstrong was appointed by the Department to make adjustment of claims under article 19, and his report will be found in full in the fourth finding. By reference to that report, it will be seen, that while some of the classes provided for by the treaty, were less in number, some of the smaller classes were largely in excess of the number provided for by the article.

It is insisted that the legal effect of this provision of the treaty was to reserve from the grant 458,400 acres of land, that being the amount the maximum reservation for the different classes of persons enumerated in the article would produce. It is alleged, that instead of there being an assignment for 1,600, as contemplated by the amount of land reserved, there was in fact, an assignment to only 731 persons, making, in the aggregate, 123,680 acres, instead of 458,400.

The report of Major Armstrong shows that only 731 persons were allowed land under said grant, amounting in the aggregate to 123,680 acres; and the question of law arising on this state of facts is, was it a grant by the defendants or a reservation by the petitioner, of so many acres of land in the aggregate, determined by the highest possible maximum, or does the right, simply inure to classes of persons limited in number in each class?

Is it a reservation in quantity, absolutely fixed in extent by the terms of the treaty, or a dedication of a certain amount of land to a specific class of persons, to be used or enjoyed upon the condition that each class has the maximum specifically designated by the terms of the reservation? If the former, the claim of the petitioner is a legal one; if the latter, then no legal right attaches because of the failure of the larger class of claims and an excess of the smaller.

The reservations of the 19th article are either to a specific individual or a class, and the classes are limited to a specific number, not to exceed that number.

Each classification was a reservation, to a number of persons not to exceed a certain number; and in case there was an excess in number in any given class, then, by the terms of the article, it was made the duty of the chiefs to determine the persons who should be excluded, and no provision is made for a deficiency in any given class.

The parties failed to provide for what claimant now insists on by way of construction—an application of the surplus of a class not having the number, to a class having a greater number than provided for by the treaty. Is this not a reservation to persons having a certain qualification not to exceed a certain number, and in no event to be beyond the actual number belonging to each class? Is not the class persons limited by the number of their class, as specified in the treaty, as effectually as are spe-

cific persons limited by the names of the persons specifically named in the treaty?

The 19th article says, "the following reservations are hereby admitted," and then follows the specific specifications numerically stated. Was it not a grant of land more or less as the measure of its requirement was determined by the number of persons having certain qualifications not to exceed in any event a certain number? In the examination of that portion of the treaty providing for these reservations, we do not find words of doubtful import or clauses of uncertain construction, and hence we are not permitted to apply the latter clause of the 18th article giving
152 the court the right to construe most favorably "well-founded doubt" in favor of the Choctaws. In the opinion of the court, the measure of the petitioner's claim on this article is determined by persons and not by quantity.

It is insisted by the Government that all claim under this article is barred by the statute giving the claimants a right to present their grievances, but it is a sufficient reply to that position to say that no claims were presented under said article.

By reference to finding 42, it will be seen that the agent of the Government decided that seven hundred and thirty-one persons became entitled to land under the cultivation classes to an aggregate of 158,960 acres; but that ninety-eight of those persons never received any location of lands or compensation therefor; that they were entitled to 15,520 acres; that forty-five other persons relinquished their right to the United States, but received no compensation for such relinquishment, and that such persons were entitled to 6,400 acres; that one individual was entitled under said article to two sections of land, and that he never received the same.

The aggregate of these reservations is 23,200 acres; as to these claims, there has been no adjudication or settlement, and as the claimant in this proceeding represents both national and individual claims, it is entitled to recover the sum of $42,920 on that item of the claim. We distinguish these claims from those under the 14th for reasons stated in the opinion in the discussion of that item.

The next matter to be considered in the order named is compensation for land alleged to have been appropriated by the United States in the location of the boundary between the lands of the claimant and those of the defendants.

The first article of the treaty of 1855, fixing more definitely the boundary of the territory ceded by the treaty of 1830, provides as to said boundary as follows:

"Beginning at a point on the Arkansas River one hundred paces east of old Fort Smith, where the western boundary line of the State of Kansas crosses said river, and running thence due south to Red River; thence up Red River to the point where the meridian of one hundred degrees west longitude crosses the same, thence north along said meridian to the main Canadian River, thence down said river to its junction with the Arkansas River, thence down said river to the place of beginning."

It is alleged that the United States in fixing the boundary between the east line of the land of the claimant and the western line of the State of Arkansas did not establish the same according to the requirements of the treaty of 1855; but upon the contrary did so establish it as to encroach on

the territory of the petitioner; that the amount lost to the claimant by such encroachment is 136,204.02 acres; that by the act of 1875 the said land became a part of the public domain of the United States without the consent of the petitioner, and the claimant demands from the United States, because of such illegal appropriation, the sum of $167,896.57, placing the value of the lands at $1.25.

It is contended by the United States that this demand, if valid, does not grow out of treaty stipulations but is founded on the act of 1875, and therefore the court has no jurisdiction to try that difference in this case.

The boundary of the lands of the claimant was fixed by the treaty of 1855, as well as other treaties, such boundary became as to it a claim founded on treaty stipulation, and it had a right to have such lands as were designated as forming a part of the territory ceded to it by treaty protected from the use and appropriation of the United States.

Finding 31 shows that the Government made a mistake in the
153 location of the boundary, substantially as alleged in the petition, that of the amount embraced in the territory appropriated by the United States, because of such mistake 21,211.33 acres have been sold, realizing the sum of $23,930.61, that there have been otherwise disposed of 35,428.56 acres, leaving 79,564.13 acres still in the possession and ownership of the Government, which is subject to purchase at $1.25 an acre.

From the best evidence before us we have found the value of the lands to be $68,102. By the act of 1875 (18 Stat. at L., p. 476) the line erroneously surveyed was fixed as the permanent boundary of the State of Arkansas and the Indian country; by force of the act, land belonging to the claimant was taken for the use and benefit of the defendants; and as the right to the land is based upon treaty stipulation the claim falls within the scope and purpose of this litigation, notwithstanding the earnest contention of the United States that the claim grows out of and is wholly dependent upon the statute of 1875.

The record shows not only an appropriation in fact of a large part of the land, but in law there is an appropriation of the whole by the legal establishment of the boundary as provided for in the statute. Upon that item of the claim the petitioner is entitled to recover the sum of $68,102.

In the twenty-ninth specification of the petition it is alleged that between July 1, 1861, and July 1, 1866, there became and was due the claimant from the United States under treaty stipulations made previous to said July 1, 1861, the sum of $406,284.93, and that of said amount the United States had a right to retain the sum of $346,835.61, leaving a balance due of $59,449.32; but it was contended by the United States that the said sum of $406,284.93 had been paid for the use and benefit of the claimant during the war, to individual members of the Choctaw Nation, who adhered to the Government, and refused to join the Southern Confederacy. The right to pay those adhering is conceded by the claimants by the allegations of its petition, and the only question of contention is, how much has been paid.

By reference to the thirty-fourth finding it will be seen that the court has found the allegations of the petition to be true, both as to the amount accruing to the claimant under treaty stipulations, and the amount paid by

cific persons limited by the names of the persons specifically named in the treaty?

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From the best evidence before us we have found the value of the lands to be $68,102. By the act of 1875 (18 Stat. at L., p. 476) the line erroneously surveyed was fixed as the permanent boundary of the State of Arkansas and the Indian country; by force of the act, land belonging to the claimant was taken for the use and benefit of the defendants; and as the right to the land is based upon treaty stipulation the claim falls within the scope and purpose of this litigation, notwithstanding the earnest contention of the United States that the claim grows out of and is wholly dependent upon the statute of 1875.

The record shows not only an appropriation in fact of a large part of the land, but in law there is an appropriation of the whole by the legal establishment of the boundary as provided for in the statute. Upon that item of the claim the petitioner is entitled to recover the sum of $68,102.

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By reference to the thirty-fourth finding it will be seen that the court has found the allegations of the petition to be true, both as to the amount accruing to the claimant under treaty stipulations, and the amount paid by

the defendants, and therefore upon that item the petitioner is entitled to recover the sum of $59,449.32.

We have examined the testimony carefully upon the question of fact, and the only conclusion that can be consistently reached is the one announced in the finding, and upon that state of fact, the right of the claimant is unquestionable.

As a further cause of action it is alleged that by virtue of the provisions of the act of Congress, approved March 1, 1861, the petitioner became and was entitled to demand from the Government $250,000 in bonds of the United States, bearing six per cent. interest on account of the award of the Senate; that the issue of said bonds was demanded by the proper authorities of the Choctaw Nation, and refused by the Government; that the petitioner has not been paid by the defendants because of such bonds; and that petitioner is now entitled to the amount of said bonds at six per cent. interest from the date of demand to the present time.

The substantial allegations of fact as made by the petition are shown by the findings, and the question for us to determine is, what are the rights of the claimant upon the law and facts, as applicable to that portion of the claim? In relation to the subject-matter of this item, three statutes have been enacted: First, the act of March 3, 1861, providing for
154 the issue of bonds (12 Stat. at L., 238); second, the act of March 3, 1871, directing the Secretary of the Treasury to issue the bonds (16 Stat. L., 570), and the act of February 14, 1873, suspending the authority of the Secretary of the Treasury to deliver such bonds until the further action of Congress (17 Stat at L., 462).

The right to the bonds in controversy originated by the act of March 3, 1861.

The peculiar condition of the country and the relation of the Choctaw Nation to the threatened revolt against the authority of the United States, which was inaugurated shortly after the passage of that act, may have been the cause of the failure to deliver the bonds under said act; and the unsatisfactory relation between the Choctaw Nation and the United States because of the war permitted the matter to rest until the act of the 3d of March, 1871.

For reasons no doubt satisfactory to the Secretary of the Treasury, he failed and refused to deliver the bonds under the last-named act, and in that condition of the rights and interests of the parties the law of 1873 was passed (17 Stat. at L., 462).

By that statute "all authority now existing by the act of March 3, 1861, and March 3, 1871, or otherwise, to issue or deliver any bonds of the United States to the Choctaw tribe of Indians is hereby suspended until further action of Congress in the matter, and providing for such issue and delivery."

The right to the bonds contemplated by the act of 1861 and 1871, is dependent entirely upon those statutes, and while indebtedness might exist from the defendants to the petitioner upon which, in this case, it may have the right to succeed, if the statutory right to the bonds has been taken away, upon that item of claim as to those bonds the law is with the defendant.

The law of 1873 just quoted, in express terms denies the right of the

Secretary to deliver the bonds by suspending his power to do so until the further action of Congress; and the Secretary being without power to deliver, the petitioner is deprived of the correlative right to demand, and being without the right to demand, the right to recover fails.

The right of the claimant to recover money from the United States is founded upon its claim against them because of treaty obligations; and a mere proposition to pay upon that obligation, unexecuted and finally suspended or retracted, does not in law increase or diminish the liability of the defendant. At the time the act of 1881 was passed, giving this court jurisdiction to try all questions of difference founded on treaty stipulations, the statute of 1873 was in full force, and the effect of that law was to remit the parties to the rights they had as against each other founded on treaties.

It might be that the refusal of the Secretary of the Treasury to deliver the bonds when demanded in April, 1861, gave the claimant the right to proceed by mandamus to compel the issue of the bonds, according to the doctrine announced in the Marbury case in 1st Cranch, 137, or the later case of the United States vs. Schurz, U. S. 378; but that would be a right founded upon the statute alone, having no reference to the question of treaty stipulations; but the claimant did not see fit to assert any legal right to the bonds until after the statute authorizing their delivery had been repealed. It is true that the petitioner is not seeking, in this proceeding, to enforce the delivery of bonds, but simply that it may be allowed as if bonds had been issued when demanded
155 in April, 1861. We are asked to allow the interest which would have accumulated on $250,000 in bonds bearing date as of the time of the demand in 1861.

The act of 1861 was a mere proposition to pay $500,000 on account; and the demand in April was simply an agreement to receive that amount as proposed; but when the parties fail to consummate the transaction and the proposition to give was withdrawn by the repeal of the law, then the treaty indebtedness was the only subsisting bond of obligation and responsibility. The proposition to pay was founded on the conceded consideration of treaty obligation, and when the proposition ceases by operation of law, the treaty liability was left intact and became the measure of obligation.

The act of 1861 simply authorized the payment of a certain sum in money and the delivery of certain bonds on account of the Choctaw claim under the treaty of 1855, and provided that in the future adjustments of the claim such money and bonds should be charged against the Indians. Upon that branch of the claim the law is with the defendants; and the only effect of the laws of 1861, 1871, and 1873 is the payment of $250,000, which is to be deducted from what may be found due the claimant upon the different branches of its claims.

The petitioner as another and distinct cause of action claims interest to the amount of $134,150, under the provisions of the act of March 3, 1845, making appropriation for the expense of the Indian department for the year ending June 30, 1846.

It is alleged that under the arrangement made for funding one-half of the scrip provided for under the act 1842, there accrued to the claimant the sum of $305,551, and that only $171,400.34 has been paid.

It is alleged that the United States refused to pay the reservees interest upon their funded scrip, until their removal west of the Mississippi; and in effect treated the payment of interest to the reservees as imposing upon the United States only the same obligation as was imposed by the act of 1842 as to the delivery of one-half of the scrip.

The record shows that only $171,400.34 (Finding XX) has been paid by the Government, and it may be that such amount was paid upon the legal theory alleged in the petition. It does not appear from the findings whether upon that theory the defendants paid all the interest the reservees were entitled to; but by legal intendment of the petition it must be assumed that the Government paid interest when the reservees brought themselves within the condition of removal. Numerous decisions have been cited upon the question of the payment of interest, which in this connection it is unnecessary to quote, for, if what we have assumed as the legal effect of the act of 1852 and the release executed by the Choctaw Nation as to individual claims under the fourteenth article, be correct, interest being an incident of the claims under said article, then such release and adjustment under the act of July 21, 1852, is a complete answer to the claim of the petition upon the item of interest.

As was said in another connection, the same authority which now brings this suit, assuming to represent the individual reservees, discharged the United States from all liability growing out of a claim under the fourteenth article, and the interest claim, being an incident, falls with the original cause of action.

By the sixteenth article of the treaty of 1830 the defendants obligated themselves to remove the Indians to their new homes and furnish them with certain subsistence for the period of twelve months after such removal. It is alleged as an item of claim in this proceeding that the United States failed and refused to furnish such transportation and subsistence as
156 provided for in the treaty to 960 Choctaws who emigrated and subsisted themselves subsequent to the year 1834. The finding on this item agrees substantially with the allegations of the petitioner, and shows that the commutation value in money for emigration and subsistence in similar cases as established by the United States at that time was $54.16.

It does not appear at what precise time between 1834 and 1845 the different persons composing the 960 left the State of Mississippi, but such emigration was in pursuance of the policy of the Government, both in the acquisition of the territory and the subsequent legislation of Congress, and for that emigration the claimant is entitled to recover on a liberal construction of the treaty of 1830 and that of 1855. It may be presumed that the most of the emigration was in the early part of the period included within the dates of the finding.

There was nothing in the treaty in the nature of a forfeiture clause, and if the one party continued to invite or permit emigration apparently upon the terms of the treaty, and the other continued to emigrate in the belief that the terms of the treaty were still operative to secure the reimbursement of their expenses, there is no reason why the instrument should not be treated like a contract which specifies a time for performance but contains no forfeiture clause, and under which the parties continue to perform by mutual acquiescence after the prescribed period has elapsed.

Emigration being the purpose of the Government, it should be charged with the expenses incident thereto. This is especially so because it was not only the policy and purpose of the Government to induce emigration, but acts of intimidation and persecution were resorted to on the part of the agents of the Government to coerce the departure of Indians.

This claim, so far as the facts of the record show, has never been adjudicated or settled in any form, and as it does not come within the purpose of the act of July, 1852, authorizing a settlement and release of certain claims, it is a proper subject of allowance in this case. Taking the number of Indians who never received a commutation for removal and subsistence at 960, as shown by the record, and allowing what was then current as commutation allowance, it aggregates the sum of $51,993.

By the fifteenth article of the treaty of 1830 it is provided that if the nation thinks proper to elect an additional principal chief the Government agreed to pay the sum of $500 a year as a salary to such officer.

If the facts found by the court sustained this claim, the right to recover would be clear in law; but the findings do not show that after the making of the treaty in 1830 an additional chief was elected by the Choctaw people, and upon that branch of the case we find for the defendants.

By the stipulations of the twentieth article of the treaty of 1830 the Government agreed to furnish to each warrior who emigrated "rifle-molds and ammunition," and Finding XIX shows that subsequent to the year 1843 there were removed by the Government 1,236 Choctaw warriors who were not supplied with "rifles, molds, and ammunition," and that the value in the aggregate at and after said time was $18,000.

The emigration of the warriors was not only in pursuance of the policy of the Government, but it may be inferred that it was at the instance of the Government, and it does not appear that there was any special arrangement between the Indians and the agents of the United States that the articles provided for in the 20th provision of the treaty of 1830 were not to be given to those who emigrated to the Choctaw country. In
157 the absence of such arrangement it is safe to assume that the Indians expected that they would be furnished with guns, ammunition, &c. The claim for these items has not been paid—is not embraced in any release or settlement made by the parties—and, construing the rights of the claimant in the spirit of the 11th article of the treaty of 1855, the petitioner should recover on that issue.

We have now disposed of the different items of the claim made by the petitioner, and insisted on in the argument by the counsel of the claimant. In the main we have adjusted the rights of the parties against the legal theory upon which the suit is predicated, in the pleading of the petitioner, but upon some of the branches of the cause, we have found the facts and law in favor of the Choctaw Nation; and in dealing with the questions presented by one of the most voluminous records ever submitted to a court, we have availed ourselves of the light afforded us by the very able arguments of counsel on both sides.

Aggregating the different amounts which we have found for the claimant, and deducting therefrom the payment made under the statute of 1861, it leaves a balance due the claimant of $408,120.32 and for that sum a judgment will be entered.

158 XI.—*Final judgment of the court.*

THE CHOCTAW NATION
vs.
THE UNITED STATES. } No. 12742.

At a Court of Claims held in the city of Washington on the first day of March, A. D. 1886, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant, and do order, adjudge, and decree that the said The Choctaw Nation do have and recover of and from the United States the sum of four hundred and eight thousand one hundred and twenty dollars and thirty-two cents (408,120.32).

159 XII.—*Application of claimant for and allowance of appeal.*

THE CHOCTAW NATION
vs.
THE UNITED STATES. } No. 14742.

From the judgment rendered in the above-entitled cause on the first day of March, A. D. 1886 (in favor of the claimant), the claimant by its attorney, on this first day of March, 1886, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

JOHN B. LUCE,
Attorney for Claimant.

Filed March 1, 1886.

And now, to wit, this first day of March, 1886, it is ordered by the court that the appeal be allowed as prayed for.

WM. A. RICHARDSON,
Chief Justice.

159½ In the Court of Claims of the United States.

Term, 1885–'86.

THE CHOCTAW NATION
vs.
THE UNITED STATES. } No. 12742.

From the judgment rendered in the above-entitled cause on the first day of March, 1886, in favor of claimant, the defendants, by their Attorney-General, on the first day of March, 1886, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Ass't Attorney-General.

Filed March 1st, 1886.

Allowed March 1, 1886.

WILLIAM A. RICHARDSON,
Chief Justice.

A true transcript of record.
Test, this second day of March, 1886.
[SEAL.]

JOHN RANDOLPH,
Ass't Clerk C't of Claims.

160 In the Court of Claims.

THE CHOCTAW NATION
versus
THE UNITED STATES. } No. 12742.

I, John Randolph, assistant clerk of the Court of Claims, certify that the foregoing are true transcripts of pleadings in the cause aforesaid, of the order overruling the demurrer of the defendants and of the opinion thereon, of the findings of fact and conclusions of law, of the opinion of the court, of the final judgment of the court, of the application of claimant for the allowance of appeal to the Supreme Court of the United States, and of the allowance of same.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this first day of March, A. D. 1886, at Washington City.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk C't of Claims.

(Indorsement on cover:) No. 1273. The Choctaw Nation, appellant, vs. The United States. Filed March 1, 1886.

And No. 1276. The United States, appellant, vs. The Choctaw Nation. Court of Claims. Filed March 2, 1886.

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IN THE

Supreme Court of the United States.

OCTOBER TERM 1886.

No. 848.

THE CHOCTAW NATION, Appellant,

vs.

THE UNITED STATES.

Filed March 1, 1886.

No. 850.

THE UNITED STATES, Appellant,

vs.

THE CHOCTAW NATION.

Filed March 2, 1886.

Appeals from the Court of Claims.

BRIEF FOR USE IN THE ORAL ARGUMENT ON BEHALF OF THE CHOCTAW NATION,

By SAMUEL SHELLABARGER.

Thomas McGill & Co., Law Printers, Washington, D. C.

Supreme Court of the United States.

October Term 1886.

THE CHOCTAW NATION, Appellant,
vs.
THE UNITED STATES. } No. 848.

Filed March 1st, 1886.

THE UNITED STATES, Appellant,
vs.
THE CHOCTAW NATION. } No. 850.

Filed March 2d, 1886.

Appeals from the Court of Claims.

Brief for use in the Oral Argument on Behalf of the Choctaw Nation, by Samuel Shellabarger.

In discussing this case I shall, in the main, confine myself to what are known as the "fourteenth-article" claims, and shall endeavor, so far as can be, without impairing the argument, to avoid discussion of all matters which, in my judgment, do not affect the leading questions upon which the case will turn. Although the evidence in the case is quite voluminous, yet, I think, that the determination of

the cause, on the main issue, by this court, will turn upon comparatively a small proportion of that evidence or findings.

JURISDICTIONAL ACT NOT REPEAL OF SENATE AWARD.

The first question I shall attempt to consider, is this:

What effect, if any, is the Choctaw Nation entitled to claim, in the determination of the case in this court, shall be given to the award of the Senate?

Certain parts of the opinion of the Court of Claims on the demurrer, and also in the final decision, indicate that that court was of the opinion that it was required to give to the award *some* vague and undefined force and effect. On the demurrer the court uses this language upon that point:

"It does not follow, however, that the action of the Senate will be *wholly* without force or effect under any circumstances of the case, that it cannot be given in evidence for any purpose, and that all reference to it, in the petition, must be disregarded and ruled out on demurrer. The act does not so provide. The jurisdiction conferred is general to try *all* questions of difference arising out of the treaty stipulations. Power is then granted to the court to review the entire question of differences *de novo*. *One of the questions of difference may be whether or not the adjudication and decision of the Senate was warranted by the facts.* To review that question we must have the action of the Senate before us. The enactment does not exclude such action from the consideration of the court; but, on the contrary, implies that it may be rightly offered in evidence. As to the effect of such action the act declares that the court shall not be estopped thereby."

19 Court of Claims, 252.

In the opinion of the court, in its final decision, at page 105 of the Record, a substantially similar and indefinite, and to me rather obscure statement, by the court, is found in regard to the effect which the court is required to give

to said award. But at last, and in deciding the case, the court abandoned the position, apparently taken in this indefinite statement, that the court was required to give *some* sort of effect to the award, and the court held that no effect whatever could be given, by it, to the Senate award.

On page 105 the court says:

"In view of the language of the act of 1881, in defining the powers of this court with reference to the action of the Senate, the most that can be said in favor of the award is, that it *may* be considered by the court subject to such objections to it as may arise, either from the facts found by the court, or the law of the case, and that such facts and law *are not affected*, to the prejudice of the defendants, *by the award*." * * * "We have not found any of the facts cited in the position of counsel against the award of the Senate; and in the absence of the peculiar provisions of the act of our jurisdiction, we would yield a most cordial assent to the soundness of the proposition asserted by counsel.

"It is true that the treaty of 1855, by the twelfth article, provides, 'it being expressly understood, that the adjudication and decision of the Senate shall be final;' but the act of 1881, which the claimants have acknowledged by bringing this suit, provides, in effect, that the decision of the Senate *may be disregarded by this court*, and all questions of difference arising out of treaty stipulations may be inquired into, *de novo*."

It will be thus perceived that the Court of Claims, notwithstanding the indefinite language, regarding the award, above quoted, at last acted upon the conclusion that "the facts found by the court or the law of the case, *governed the decision of the court*," and further acted upon the position that "*such facts and law are not* AFFECTED *to the prejudice of the defendants by the award*." In other words, the court held that the act of 1881, being accepted by the appellant, put the case in a position where the facts and law found by the court, extrinsic of the award, were "*not affected*, to the prejudice of the defendant, by the award."

I address myself, therefore, at the outset, to the question whether this position of the Court of Claims was erroneous. I maintain that it clearly was erroneous, and in support of this submit the following considerations, upon which I now enter:

The language of the jurisdictional act bearing upon this point is in these words:

"That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render a judgment thereon; power is hereby granted the said court to review the entire question of differences *de novo*, and it shall not be estopped by any action had, or award made, by the Senate of the United States in pursuance of the treaty of 1855."

The position of the Court of Claims was that this language in the jurisdictional act means that the court shall, as against "the facts and law found by the court," independently of the award, give no "*effect*" whatever to the award—that this language, accepted, through suit brought, by the appellant, abolishes the award.

I submit, in reply, the considerations which I proceed to state.

I.

What "Question of Difference" existed at Date of Jurisdictional Act.

It is express and unambiguous, on the face of this act, that the court was required "to take jurisdiction of, and try ALL, questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render a judgment thereon."

Taking this paragraph *by itself*, therefore, it cannot be denied that if one of "the questions of difference," existing at the date of the act, which arose out of treaty stipulations,

was a claim, by the Choctaws, that the award was binding and ought to be paid, then this question of difference is one of which the court was required to take jurisdiction, and which it was required to try.

It is expressly found by the Court of Claims in its findings of fact that the obligation to pay this award of the Senate was one of the claims and "questions of difference" made by the Choctaws. See finding No. 40, page 93 of the Record, as follows:

"On the 9th day of January, 1861, the claimant, by its memorial addressed to Congress, demanded payment from the United States of the amount claimed to be due to it under and by virtue of said award."

It was in pursuance of this demand, so found by the Court of Claims, that the act of Congress of the 2d of March, 1861, (12 Stats., 238,) was passed, providing for the payment, to the Choctaws, on account of their claim under the eleventh and twelfth articles of the treaty of 1855 of the sum of $500,000.

Repeated acts of Congress were passed in recognition of said demand, and claim for the payment of the said award.

An act of the 27th of July, 1868, section 5, (15 Stats., 223,) directed the Committees of the Indian Affairs of the Senate and House to examine the claim of the Choctaws for all matters of difference between them and the Government of the United States, and to report the result of the examination to their respective Houses.

In obedience to the provisions of said fifth section, the Committee of the House, in report No. 77, Fortieth Congress, second session, reported in favor of paying the said award.

The Committee on Indian Affairs of the Senate, through Senator Harlan, on the 14th of April, 1869, reported to the Senate, stating the award of the Senate *and its binding force*,

as set up and alleged by the Choctaws, that both branches of Congress had, in the act of 2d of March, 1861, recognized the validity of the award, and recommend that the question be referred to the Judiciary Committee of the Senate.

On the 22d of June, 1870, the Senate Committee on the Judiciary reported a bill to the Senate, No. 973, authorizing the issue of bonds, in favor of the Choctaws, to the amount of one million, eight hundred and thirty-two thousand, five hundred and sixty dollars and eighty-five cents, for the purpose of paying the said award. (See Cong. Globe, July 12, 1870, p. 4583 *et seq.*)

Senate Report No. 278, 41st Cong., 2d session, dated January 5, 1871, reports that the President, under existing law, had authority to deliver to the Choctaws $250,000 of bonds provided for by the act of 2d of March, 1861.

A similar report was made by the House Judiciary Committee, being Report No. 41, 41st Congress, 3d session, dated February 27, 1871.

Another of these acts is dated March 3, 1871, (16 Stats., 570,) which authorized the Secretary to issue to the Choctaws bonds to the amount of $250,000, as directed by the said act of March 2, 1861.

The Choctaws continued, during all these years and up to the act of 1881, to press for the payment of the said award. Under this pressure and claim of the Choctaws, the following, amongst other, reports were made in Congress:

Senate Report No. 318, 42d Congress, 3d session, January 22, 1873, recommends the *payment of the said award with interest from the date of the award.*

Another report is House Report No. 80, 42d Congress, 3d session, February 22, 1873, *which recommends the payment of the award,* $2,332,560.85, less $250,000 already paid.

Another report is House Report No. 391, 43d Congress,

1st session, dated April 9, 1874, which recommends *the payment, in bonds, of said award*, after a proper deduction, to wit, the payment of $2,731,247.30, with interest.

Another report is House Report No. 599, 43d Congress, 1st session, dated May 20, 1874, which recommends *the payment of the award*, $2,731,247.30, *with interest*.

The result of these investigations and reports was the passage of the act of the 23d of June, 1874, (18 Stats., 230,) which provided that the Secretary of the Treasury should investigate the amount due from the Choctaw Nation to the individuals of the tribe, as referred to in articles 12 and 13 of said treaty of 1855, this report being declared in the act to be required "with a view of ascertaining what amounts, if any, should be deducted from the sum due from the United States to the Choctaw tribe for the purpose of enabling the said tribe to pay its liabilities, and thereby enable Congress to provide a fund to be held for educational and other purposes for said tribe, as provided in said article 13 of said treaty."

Under this act of Congress the Secretary of the Treasury, Bristow, made a report December 23, 1874, being Executive Document No. 47, 43d Congress, 2d session, the substance of which, as to the amount due, is as follows:

"The results of the inquiry directed by Congress may be briefly summarized as follows:

Amount of liabilities from the nation to individuals, without interest		$3,216,098 00
Amount of liabilities from the nation to individuals, with interest.....		5,439,551 00
Amount of "net proceeds" or "sum due," as ascertained under the award of the Senate.....	2,981,247 30	
Less payment on account.....	250,000 00	
Balance of award, exclusive of interest.....		2,731,247 30"

In Congress, subsequently to this report of the Secretary, made under the said act of the 23d of June, 1874, the following reports were made:

House Report No. 499, 41st Congress, first session, May 15, 1876, report *concedes the binding force of the award, declared it should be paid, with interest from the second of March*, 1861, but, owing to some difference between the two houses, recommends its adjudication in the Court of Claims.

On the 26th of February, 1878, report No. 251, 45th Congress, second session, the majority of the House Committee on Indian Affairs recommend the question of the amount *payable under the award* be referred back to the Senate, to determine what amount *is due under the award*, and a minority report reported the bill to provide for the adjudication of the claim in the Court of Claims.

On the 13th of February, 1879, the Committee on Indian Affairs of the Senate reported, by bill No. 1816, 45th Congress, third session, providing that the Court of Claims take jurisdiction of and determine the claims of the Choctaws against the United States under the award.

On the 16th of May, 1879, (House report No. 4, 46th Congress, first session,) the Committee on Indian Affairs of the House reported the bill, which became a law, and is the jurisdictional act under which this suit is prosecuted.

I have referred to these acts of Congress, to these reports, and to this finding of the Court of Claims, No. 40, for the purpose of establishing and fixing, once for all, in the case, how incontestably plain and express is the proposition that *one* of the claims and "questions of difference," and the nearly all-embracing claim and question of difference, existing at the date of this jurisdictional act, was that the award was binding and ought to be paid.

JURISDICTIONAL ACT REQUIRES ALL QUESTIONS OF DIFFERENCE TO BE TRIED, AND TRIED ACCORDING TO JUDICIAL PRINCIPLES.

This being now made utterly plain, my first proposition of law regarding the jurisdictional clause of the act of 1881 is, that the clause which requires the court to take jurisdiction and try *all* questions of difference, is a clause which does not abolish the award, but recognizes the claim made thereunder as one that grows out of a treaty stipulations, and one which is to be tried by this court, and tried in obedience to *the law* relating to the force of all other awards.

This jurisdictional clause being viewed, therefore, independently of the clause which follows the words in the act, "and to render judgment thereon," is one which plainly requires the court to try the said claim of the Indians, and "the question of difference" asserting that the award is binding and should be paid.

Discussion of this proposition just stated cannot make it plainer than it is made by the unambiguous and express requirement of the clause, and I am, therefore, brought to the question whether the language which follows the words "and to render judgment thereon," has the effect of abolishing the award, as was held by the Court of Claims.

This language, following the said words, is as follows:

"Power is hereby granted to the said court to review the entire question of differences, *de novo*, and it shall not eb estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of 1855."

The question is, does this language abolish the requirement of the preceding clause, which contains the mandatory provision that the court shall try *all* questions of difference, including the question of the binding force of, and obligation to pay, the award?

That the latter clause of this jurisdictional provision has no such effect as the abolishment of the award, I submit is established by the following considerations:

THE SCOPE AND EFFECT OF THE CLAUSE IN JURISDICTIONAL ACT TO REVIEW DE NOVO.

This latter clause, in regard to the "review *de novo*" is not an *exception* to, or *limitation* upon, or an abridgment of, the broad provisions of the first part of the jurisdictional clause; but, on the contrary, is simply a provision authorizing and requiring the court to exercise judicial functions in trying the question of the finality of the award, and to review the question of finality, and to make its review according to the principles of law applicable to all such awards and judicial reviews.

Full and complete effect can be given to this clause relating to review, by saying of it that its design was to enable the court to exercise such power as courts exercise in reviewing such subjects-matter. This latter clause was designed to say that there should be no estoppel, or bar, or statute of limitations, such as would prevent the court from doing that which it is the office of a bill which is brought to set aside a judgment on the ground of mistake, partiality, or fraud, or such functions as are exercised by the courts upon and under bills of review or the like. When this effect is given to this clause, relating to review, it has accorded to it full and complete effect, and it is made to be in harmony with the first part of this jurisdictional clause requiring "*all* questions of difference" to be tried.

If this clause, relating to review, should be held to be in the nature of a proviso, the result would not be changed, because a proviso in an act is never suffered to repeal or overthrow the main or enacting provision of a statute. This is familiar law. Upon this point the authorities are fully cited in the brief, (pp. 93, 94,) and need not be at length repeated here.

In the case of the United States *v.* Dickson, 15 Pete., 165, on this point the court says:

"Passing from these considerations to another, which necessarily brings under review the second point of objection to the charge of the court below, we are led to the general rule of law which has always prevailed, *and become consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects*" (that is the case at the bar) "*and a proviso is afterwards introduced, that proviso is construed strictly, and takes no case out of the enacting clause which does not fall fairly within its terms.* In short, a proviso covers special exceptions only out of the enacting clause, and those who set up any such exceptions *must establish as being within the words as well as within the reason thereof.*"

The same thing is decided in Ryan *et al. v.* Carter *et al.*, (93 U. S., 83,) where the court says:

"The general rule of law is that a proviso carves special exceptions only out of the body of the act, and those who set up such exception must establish it as being within the words, as well as the reason, thereof."

Any construction of a proviso that makes it repugnant to the enacting clause or body of the act is wholly inadmissible.

See Savings Bank *v.* The United States, 19 Wall., 236.

I submit that it is impossible to hold that this clause, relating to review, can be shown to be designed to destroy the jurisdiction conferred by the first part of the clause, and which jurisdiction required the court to try, according to law, all questions of difference, including the question of the binding force of the award; and I proceed to submit the following additional reasons why such effect cannot be given to this alleged proviso relating to the power to review.

EFFECT OF WARDSHIP OF TRIBES UPON CONSTRUCTION OF THEIR TREATY RIGHTS.

To give this clause, relating to review, the effect of abolishing the finality of the award, is, in the first place, to inflict upon this Indian tribe an injustice and hardship which has never been tolerated in the courts in dealing with and construing Indian treaties. Nothing is more familiar to the court, nor more firmly settled, than the proposition that, in construing Indian treaties, the courts will give to them, upon general principles, and independently of any stipulation in the treaty bearing upon this point, most beneficent and liberal construction. The authorities upon this point are also set forth in the Brief at pages 147–166.

In Worcester *v.* State of Georgia (6 Pet., 582) the court says:

"The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import as connected with the tenor of the treaty, they should be construed as used only in the latter sense."

In the case of The Kansas Indians (5 Wall., 760) the court says:

"It is argued that these words [in a certain treaty] refer to a levy and sale under judicial proceedings. But such a construction would be an exceedingly narrow one, whereas enlarged rules of construction are adopted in reference to Indian treaties."

And the court then proceeds to quote the above language from Worcester *v.* The State of Georgia, the language of Chief Justice Marshall, which is as follows:

"The language used in treaties with the Indians shall never be construed to their prejudice, if words be made use

of which are susceptible of a more extended meaning than their plain import as connected with the tenor of the treaty."

In Polk *v.* Best, 18 Wall., 116, the same thing is strongly inculcated.

This relation of wardship is, by this court, again solemnly asserted in Fellows *v.* Blacksmith, 19 How., 372—this not as a matter of sentiment, but as an important rule of construction of Indian treaties and rights. There, in getting at the sense of a treaty, the court again designates them as a "*dependent people*"—*as a tribe of Indians who are in a state of pupilage, and hold the relation to the Government as guardian to his ward.*"

The same thing, regarding the spirit of liberality with which laws and treaties affecting the Indian tribes will be construed, is found throughout the body of our decisions on these matters.

In the case of Ladiga *v.* Rowland (2 How., 581) the same spirit of liberality will be found strongly impressed upon the opinion of the court.

In an opinion by the Attorney-General (Taney), of date November 1, 1831, in regard to the construction of one of the very treaties involved in the present case, to wit, that of September, 1830, the Attorney-General uses this language regarding such treaty:

"In an instrument of this sort, made with such persons as the Choctaws, I do not think that strict and technical rules of construction should be applied to it. It ought to be expounded liberally, according to its spirit, so as to give to the Indians all the advantages and facilities in their removal which appears to have been contemplated by the general scope and spirit of the treaty. And this rule of construction is sanctioned by the clause at the end of article eighteen, which stipulates that, whenever well-founded doubts shall arise, it shall be construed most favorably towards the Choctaws."

Indeed, the same rule has, by this court, been most emphatically sanctioned and enforced even in the construction of treaties with foreign States. In construing the treaty of Guadalupe Hidalgo in the case of United States *v.* Sutherland, 19 How., 365, the court, in enforcing this requirement of enlarged and liberal justice and equity, uses these words:

"But the United States had bound themselves by treaty to acknowledge and protect all *bona-fide* titles granted by the previous Government; and this court has *no discretion* to enlarge or curtail such grants to suit our own sense of propriety or to defeat just claims, however extensive, by *stringent, technical* rules of construction to which they were not originally subjected."

See, also, 3 Pet., 242; 100 U. S. R., 487.

INTERPRETATIONS SECURED BY EXPRESS TREATY.

But to these just and salutary enunciations now quoted from this court, I add the force of express, and duplicated, treaty stipulation which here is of commanding authority in guiding the court in its interpretation of these treaties and of statutes made for their enforcement.

At the end of article 18 of said treaty of 1830 (7 Stats., 336) is contained this significant and mandatory covenant, and which applies throughout the present case, being in the very treaty which makes the ultimate foundation of the most of the claims here urged. It says:

"And further, it is agreed that, in the construction of this treaty, wherever well-founded doubts shall arise, it shall be construed *most favorably towards the Choctaws.*"

The eleventh article of the treaty of 1855 (11 Stats., 613) presents the anomaly of a preamble in the midst of a treaty attached to its eleventh article, and in which preamble is recited the fact that the United States, "justly appreciating the *sacrifices, faithful services, and general good*

conduct of the Choctaw people, and being desirous that their *rights and claims* against the United States shall receive a JUST, FAIR, and LIBERAL consideration, it is, therefore, stipulated that the following questions be submitted for adjudication to the Senate of the United States."

Here, then, I proceed, in the enumeration of the considerations which forbid the interpretation of this jurisdictional act which the Court of Claims gave to it, and which made such jurisdictional act to be an arbitrary, peremptory, and unjust repeal of the principal provision of the treaty of 1855, contained in the eleventh and twelfth articles, with the admonition of Chief Justice Marshall, that "*the language used in treaties with the Indians should never be construed to their prejudice.*"

I proceed with this admonition of the Chief Justice, reinforced by the repeated decisions of this court never departed from. I proceed with this admonition, expressly covenanted for in each of the two treaties which make the foundation of the present case, to wit, that of 1830, and that of 1855.

With these infallible guides I go, then, to the main question of this case—Does the jurisdictional act arbitrarily repeal or abrogate the eleventh article of the treaty of 1855, and the award made thereunder?

I have already said that the two clauses, in the jurisdictional provision of this act of 1881, are capable of being reconciled and made to "stand together" by saying that the first clause, requiring the court to take jurisdiction of and try "*all* questions of difference, and render judgment thereon," can be reconciled with the second clause in regard to the review *de novo*, and to the non-estoppel by the award of the Senate.

I have said that this reconcilement is to be found in saying that the first clause requires *all* questions of difference to be tried by the court, and to be tried according to known principles of law; and that the second clause is one making

the simple, usual, and just provision that the award of the Senate should not work the conclusive estoppel which is wrought by decisions of the court when the time for filing bills of review, bills for setting aside judgments for fraud, prosecuting writs of error, and the like, has passed by, and the judgment or decree has become a final and conclusive and absolute estoppel.

I have said that the second clause, relating to the review *de novo*, is fully satisfied by making it to mean that, in determining the effect of the award, the courts shall have power to overthrow the award, provided they find, in the review *de novo*, that there is that which, according to the known principles of the law, would set aside the award.

I have said that this view reconciles the two clauses of the jurisdictional part of the act; that it results in plain justice; that it is an interpretation giving the usual and manifest sense of the entire language employed; and that, applying to the interpretation of a statute the most rigid and stringent principles of interpretation against the Choctaws, the result is that it requires the court to give, in trying all questions of difference to the award, the force which the treaty gave to it in making it final, but subject, of course, to be overthrown by anything which the known principles of law would make to constitute such overthrow.

All Treaty Stipulations to be Enforced, and not Merely a Part of Them.

I now proceed to add other considerations leading to the same result. One of these additional considerations is this: It is plain and peremptory, on the face of the act, that the court, in making the trial commanded by the act, were required to obey and be guided by "*treaty stipulations.*" The "questions of difference," which the court is empowered to try, are those which rested upon "treaty stipulations." This is literal and express. The statute does not

indicate that *some* treaty stipulations were to be enforced in this trial, and others trampled down. The history to which I have already pointed shows that the supreme "treaty stipulation" which had furnished the subject-matter of claim by the Choctaws, pressed upon every Department of the Government for twenty years preceding this act of 1881, was the insisting, by the Choctaws, that the award should be regarded binding and final, and should be paid. This was, at the date of this act of 1881, indeed the great "question of difference," supreme and overshadowing all others. Nobody had ever been heard to say, up to the date of the act of 1881, that this treaty stipulation, making the award obligatory and binding, was to be *arbitrarily* ignored, repealed, or trampled under foot. And yet the construction which makes totally inoperative, and repeals, the finality clause of the twelfth article, is one which, instead of requiring the court to enforce "treaty stipulations," is a construction which requires the court to treat as nugatory that very treaty stipulation which, at the date of the jurisdictional act, constituted the supreme matter of difference which brought that act into existence.

This construction, therefore, which makes this jurisdictional act trample down the treaty provisions giving sanctity to the award, is one not only failing to observe the requirement that the Indian treaties and statutes for their enforcement shall be construed liberally in their favor, but it is one which defies the very letter of the statute requiring all treaty stipulations to be observed in trying the questions of difference arising therefrom.

Repeal of Senate Award is Repudiation.

The next consideration submitted in resistance of the position of the Court of Claims that the jurisdictional act abolishes the award, is equally conclusive, and is this: That

it is an interpretation of the jurisdictional act which results in flagrant, palpable, and undisguised *repudiation*, by the United States, of its treaty obligations. This court has never, in its history, when brought in contact with questions of repudiation, failed to stamp such attempts with the stigma of its abhorrence.

In speaking of such repudiation by the United States of its obligations, this court, through its chief justice, uses, in denunciation of repudiation, these words:

> "If they" [the United States] "repudiate their obligations, it is as much repudiation, with all the wrong and reproach that that term implies, as it would be if the repudiator had been a State or a municipality or a citizen." 99 U. S., 719.

The position, which attributes to this jurisdictional act the design to disregard the award of the Senate, and which deprives this court of all judicial functions in making this trial, which these articles gave to the Senate, is, as I have already remarked, one which makes the jurisdictional act to repeal the eleventh and twelfth articles of the treaty of 1855, and to repudiate all the provisions thereof, and causes the act to make this repeal *after* the adjudication by the Senate had become *known* to the repudiator, and after the repudiator had LOST HIS CASE before its own chosen tribunal, the second highest known to the Constitution.

TRIAL UNDER ORDINARY RULES AS TO EVIDENCE NOW IMPOSSIBLE.

If this act of repudiation stopped here, the enormity of it, I respectfully submit, would be such as it would be difficult to describe in words. But it does not stop here in its bad elements. The repudiation, alleged to be accomplished by this jurisdictional act, is one which comes fifty years after the events had transpired, which must be proved in such trial, and which constitute the foundation

of the trial sent to this court by the jurisdictional act, if that jurisdictional act is held to repeal the award of the Senate.

The interpretation given, by the Court of Claims, to this jurisdictional act, is that it required the Court of Claims and this court to try "the questions of difference" growing out of the treaty of 1830, and to try this "*unaffected*" (to use the language of the Court of Claims) by the award of the Senate.

Therefore, if the award of the Senate is to be ignored, and the "differences growing out of the treaty" of 1830 are to be tried by the ordinary rules of the common law, then the testimony which would decide those questions of difference must be testimony in regard to the transactions of 1831, 1832, 1833, 1834, 1835, and 1836, touching the deprivation of rights suffered by Choctaws by reason of the failure of the defendants to comply with the various articles of the treaty of 1830.

To have tried these issues thus would require the production of *living witnesses* to show what Choctaws, for example, were prevented from securing reservations under the fourteenth article of the treaty, and deprived of their rights under the various other articles.

When the act of 1881 was passed, it was known to Congress, and to all mankind, that not a living man existed who could testify in regard to these transactions required to be tried on such testimony by the court.

To have sent the Choctaws, therefore, to a common-law trial, deprived of the benefit of the public records, and especially of all benefit of the award of the Senate, would be giving to this act an interpretation making it an insolent mockery.

Such a construction of this statute would not only be in violation of the rules of interpretation above cited regarding the "liberality" with which Indian treaties are to be construed, but is in flagrant disregard of other fundamental

maxims of construction. One is that laid down by this court in the case of the United States *v.* Forty-three Gallons of Whiskey, (108 U. S., 491,) where this court holds in these words:

"*The laws of Congress are always to be construed so as to conform to the provisions of a treaty, if it be possible to do so without violence to their language*" (p. 496).

As already remarked, the construction given to this jurisdictional act by the Court of Claims is one which makes it to arbitrarily repeal the supreme treaty provision which the courts were directed to try, and, of course, try in obedience to the provisions of the treaties; and hence to make this act to be one designed to require the trial to be conducted in defiance of the very treaty which the action is based upon, is to give the act an interpretation in plain violation of the rule last cited.

108 U. S. R., 496.

INTERPRETATION AVOIDS UNJUST AND ABSURD RESULTS.

Another rule of interpretation, disregarded by the Court of Claims in making the jurisdictional act repeal the treaty and the award thereunder, and which is a settled *maxim* of interpretation is, that statutes shall never receive constructions, when that can be avoided, which lead to results that are absurd or unjust.

Upon this point this court has said, in the case of The United States *v.* Kirby, 7 Wall., 482:

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to *injustice, oppression, or absurd consequences. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character.*

The same, in effect, is in Ritchie *v.* Smythe, 13 Wall., 162.

This language of Justice Field, found in The United

States *v.* Kirby, *supra*, is repeated by this court in Carlisle *v.* The United States, 16 Wall., 153.

The same thing is repeated, and The United States *v.* Kirby is reaffirmed, in Oates *v.* National Bank, 100 U. S., 244.

This language of Justice Field is again quoted, and the case reaffirmed, in Chew Heong *v.* United States, 112 U. S., 555.

How supremely unjust and absurd is this construction, which makes this jurisdictional act to be a repudiation of the treaty of 1855, is made to appear in every part of this discussion.

Repeal of Enacting Clause not Allowable.

Another maxim of interpretation, which is disregarded in reaching the conclusion that the jurisdictional act was designed to repeal the award of the Senate, and was designed to prohibit the court from trying, according to law, the validity of the award, that being the supreme question of difference arising out of treaty stipulations, and the one which brought into existence this jurisdictional act, is one already alluded to, namely, that it fails to give effect to the enacting clause of the statute, and makes the clause relating to "review *de novo*" to be a *repeal* of the provision requiring "*all* questions of difference arising out of treaty stipulations" to be tried by the court *on judicial principles.*

On this point, of the obligation of the court to so construe statutes that every part "shall stand together," and none of the provisions of the statute shall perish, I select the following from the numerous cases where the court has enforced this rule.

In The United States *v.* Walker (22 How., 311) this court says, speaking of a repugnancy that shall be held to work a repeal:

"The supposed repugnancy ought to be clear and controlling before it can have that effect of working a repeal."

The same thing is stated in Wood *v.* United States, 16 Peters, 463.

In Fabbri *v.* Murphy, 95 U. S., 196, the court says:

"Authorities show that there must be *positive* repugnance between the provision of the new law and the old to work a repeal."

In Arthur *v.* Homer, 96 U. S., 140, the court says:

"To induce a repeal of a statute, by implication or inconsistency of the latter statute, there must be such a *positive* repugnance between the two statutes that *they cannot stand together*." (Citing 1 Black., 459; 16 Peters, 342; 11 Wall., 88.)

In the case of McCool *v.* Smith, 1 Black., 470, the court says:

"A repeal by implication is not favored. The leaning of the court is against the doctrine, if it be * * * possible to reconcile the two acts of the legislature."

The same rule which prevents a *subsequent* statute from repealing a prior one, where that can be avoided, prohibits a *subsequent* clause of a section from working a repeal or abrogation of the main or enacting clause.

This doctrine is strongly stated in such cases as—

The United States *v.* Bassett, 2 Story, 389.
Ogden *v.* Strong, 2 Paine, 584.
Strode *v.* The Justices, 1 Brock., (by Chief Justice Marshall,) 162.
Savings Bank *v.* United States, 19 Wall., 227.
United States *v.* Fisher, 2 Cranch., 358.
Atkins *v.* Disintegrating Co., 18 Wall., 272.

CONGRESS, IN A STRICTLY JUDICIAL TRIAL, CANNOT PRESCRIBE WHAT SHALL BE THE FORCE OF THE SENATE AWARD.

I now proceed to a still other, and, if possible, a more conclusive ground of objection to the interpretation which

makes the clause of the jurisdictional act, relating to the power to review *de novo*, to work a repeal of the enacting and principal clause of this jurisdictional act, and a virtual repeal of the eleventh article of the treaty of 1855, and an abolishment of the award of the Senate.

This additional reason or ground I state thus:

As already remarked, the first clause of the jurisdictional act is one commanding the court to try "*all* questions of difference arising out of treaty stipulations, and to render a judgment thereon;" that the effect of this clause plainly is to require the court *to try the questions of difference growing out of treaty stipulations in the light of, and in obedience to, the "provisions" of the "treaty" out of which the questions of difference grew.*

Add to this consideration just stated this additional one, to wit, that, in making that trial, the courts are directed to make the trial according to the principles of law, and to conduct a strictly judicial proceeding or trial, and to render a strictly judicial judgment.

Stated in other words, the effect of this jurisdictional act is one that confers upon the court "*strictly judicial powers*," to be exercised "judicially" and according to the known principles of law, and to render a judgment that would be *final*, and require no indorsement or approval by Congress, or other tribunal, in order to make the judgment final, and to impose the obligation, on the officers of the law, to execute the judgment.

What is here meant to be stated, in regard to the character of the judicial proceedings authorized by this act, is thoroughly analyzed and illustrated in the case of Gordon *v.* The United States, 117 U. S., 698. There this court, through its late Chief Justice Taney, makes a careful analysis of the distinction between that class of judgments or decisions, which are in the nature of a mere auditing, such as the Court of Claims *originally* could alone render, and, on the other hand, such proceedings as were "strictly

judicial," and result in "judgments," properly so called. There the court reaches the decision, in the light of authorities thoroughly reviewed, that "the Constitution of the United States delegates no judicial powers to Congress. Its powers are confined to legislative duties and restricted within certain prescribed limits."

And the court proceeds thoroughly to examine this subject and to show—

First. That as to a "strictly judicial proceeding" authorized in the courts, it is incompetent for Congress to undertake to direct what effect shall be given, for example, to a judgment of a court, or to the instruments and means of trials required, on known principles of law, in reaching that judgment.

Second. That Congress cannot delegate to the Supreme Court of the United States any power to exercise any functions in the nature of auditing powers, or any other functions than those strictly judicial in their nature.

From this case, and others there cited like it, it is conclusively established that, since the present jurisdictional act authorizes this court to take jurisdiction, on appeal, of the trial of these questions of difference, therefore it is the design of that act to make that trial "a strictly judicial trial" within the meaning of these words as used in Gordon *v.* United States.

This being incontestibly the design of this act of Congress, it results, conclusively, that it was incompetent for Congress, having thus directed a strictly judicial trial, to limit, define, control, or prescribe to the court what effect the court should give to any instrument of evidence pertinent, according to the established principles of law, in conducting that trial, and in reaching that strictly judicial judgment.

The act required the court to try, in the light of and controlled by the "treaty provisions" out of which questions of difference grew, all questions of differences. It required

the court, in doing so, to try the questions according to established judicial principles. It required the court to admit in evidence all competent, relevant, and pertinent instruments of proof, and to give such proofs their legitimate legal effect. If the award of the Senate was, according to the principles of law, competent, relevant, and pertinent evidence, (and even the Court of Claims found that it was pertinent,) then it was clearly beyond the competency of Congress to say to the courts they should give this, that, or the other effect to the award of the Senate; or should give no effect at all, as held by the court below. That question, to wit, the effect which the award ought to have in the trial, *was a judicial question* with which Congress could not interfere, and as to which it could prescribe no limitations. It was perfectly competent for Congress to make the Court of Claims an auditing court, to report its views about the Choctaw case to Congress. This, Congress has done in various acts, such as the act commonly known as "the Bowman act;" the act authorizing the Court of Claims to try the French spoliation cases, and the like. This, the court, in the case of Gordon *v.* U. S., and in many other cases, has said Congress may properly do; and may prescribe the rules for the government of such mere auditing trial.

But the case of Gordon *v.* U. S. is a direct authority upon the point that this controlling of the force and judicial effect of the instruments of trial is not tolerated to Congress where a strictly judicial trial is directed, and a final common-law judgment or a decree is authorized, and which judgment or decree Congress is not required to affirm in order to give it final force and validity.

From this it plainly and conclusively results that the interpretation which the Court of Claims gave to this act so authorizing a strictly judicial trial and judgment, is one which gives to the act an unconstitutional effect. Such a

construction, when avoidable, is never allowed. (3 Pet., 433; 6 Cr., 88; 112 U. S., 268, 269.) It was no more competent for Congress to direct that the award of the Senate should have no effect in the trial, or to direct that the treaty provision in the eleventh and twelfth articles of 1855 authorizing the award, and making it final, should have no force or effect in the trial, than it was competent for Congress to prescribe in the act of the 12th of July, 1870, (16 Stats., 235,) what effect the courts should give, in a judicial trial, to the pardon or amnesty of the President; and which attempt by Congress in said act was held by this court to be unconstitutional in the case of the U. S. *v.* Klein, 13 Wall., 128.

This case of the U. S. *v.* Klein is one, I submit, directly in point. It renders unconstitutional and void an attempted provision by Congress, for this strictly judicial trial, prescribing the effect which courts shall give to the award of the Senate, or that the court shall give no effect thereto.

This doctrine of the Klein case, and the case itself, are repeated and reaffirmed by this court in the following cases:

Armstrong *v.* U. S., 13 Wall., 155.
Carlisle *v.* U. S., 16 Wall., 152.
Haycraft *v.* U. S., 22 Wall., 194, 195.
Lamar's Executor *v.* Brown *et al.*, 92 U. S., 194, 195.
Knote *v.* U. S., 95 U. S., 153.

Hardship resulting from the Construction which Repeals the Award.

Ordinarily an apology would be due from counsel to this court for a recitation of familiar and settled principles of law such as I have now indulged in in regard to the construction of this jurisdictional act, which has been by the Court of Claims made to operate as a repudiation of

the solemn treaty obligations of the United States. But here, in view of the magnitude of the interests involved, the dignity and even solemnity of the questions disposed of by the Court of Claims, and of the high responsibility this case puts upon counsel, no such apology seems to me to be required.

In concluding these objections to the interpretation which worked the repudiation, by the United States, of its treaty obligations making final this award, and which results in the shocking injustice and hardship to which I have in part pointed, and to which I will further allude, and which deprives this nation of its most important and sacred treaty rights, I wish to add that in the case there is nowhere found an *apology* for, much less a reason to justify, the conclusion in favor of the repudiation which was reached by the Court of Claims.

The court itself has, in effect, admonished this court, by its findings of fact, that there is no such apology for overthrowing the award of the Senate. The court has found, as a fact in the case, the report of the committee upon which that award was based. (See finding No. 43, R., 94.)

No fair-minded person, and much more no judicial mind actuated by principles of justice, can read that report, in the light of which the award was made, without reaching the same conclusion reached by the Senate and the committee, that the award was required by the most obvious principles of legal justice.

In summing up, at the end of that report, the conclusions of fact reached by the committee, they use these words:

"*And while, on the one hand, to award to the tribe the net proceeds of their lands would surely be no more than just to them, because, practically, no regard is paid to actual value by the United States in the sales of public lands; and undeniably the real market value of these lands, which the Indians might have realized if protected in their possession, was far greater than the price for which they actually sold; on the other hand, the United States would neither have lost, paid, or expended anything what-*

ever, but would only have refunded to the Choctaws the surplus remaining on hand of the proceeds of their own lands, after having repaid themselves every dollar expended for the benefit of the Choctaws; AND THAT AFTER HAVING HAD THE USE OF THIS SURPLUS FOR MANY YEARS WITHOUT INTEREST, AND WHEN, ACCORDING TO THE ESTIMATES OF THE GENERAL LAND OFFICE, IT WOULD REALLY AMOUNT TO LITTLE MORE THAN HALF OF WHAT MIGHT BE RECOVERED IN A COURT OF EQUITY, IF THE CASE WERE ONE BETWEEN INDIVIDUALS, AS WILL APPEAR BY THE COMPARATIVE STATEMENT HERETO APPENDED."

I beg the attention of this court to the concluding words of this statement on which the award is based—words which the most thorough investigation of this vast case will prove to have been more than warranted by the evidence therein, where the committee says:

"It (the amount allowed by the award) would really amount to LITTLE MORE THAN HALF OF WHAT MIGHT BE RECOVERED IN A COURT OF EQUITY IF THE CASE WERE ONE BETWEEN INDIVIDUALS AS will appear by the comparative statement hereto appended."

Again, the Court of Claims has said in its finding No. 39, Record, pp. 89 and 90, as follows:

"The consideration which was given by the Senate to the subjects-matter, so submitted to it by the said eleventh article of the said treaty, and to the evidence which was so presented to, and taken and considered by, the Senate, was full, fair, and impartial, and its adjudication, as made under the said article, was not influenced or affected by, and was in no way or degree the result of, any fraud, corruption, partiality, and there is no evidence tending to show that it was the result of surprise, or mistake on the part of the Senate, or of any member thereof."

Again. The Court of Claims has solemnly found as a fact in the case in finding No. 16, Record, p. 72, that the acceptance of scrip and the acceptance of the money to redeem the same, and all other acts relied upon by the Court of Claims, as those which deprive the Choctaw Nation of

their right to the moneys awarded to them by the decree of the Senate, were acts done by the Choctaws—

"BECAUSE THEY WERE POWERLESS TO ENFORCE ANY DEMANDS AGAINST, OR TO IMPOSE CONDITIONS UPON, THE UNITED STATES."

Once more. The Court of Claims, in reaching its conclusion that the obligations of the eleventh and twelfth articles of the treaty of 1855 ought to be repudiated, and the award thereunder disregarded, based that conclusion, in part, upon the proposition, which it states in these words, (Record, p. 104):

"But that the legal right of the parties were *misapprehended by the action of the Senate*, and that, in the exercise of its power under the treaty of 1855, it assumed functions of *policy* unauthorized by the rule of law which was to govern its adjudication, by the submission under that treaty."

There is *no finding of any fact* which justifies the court in charging that the Senate "misapprehended the rights of the parties." Hence the language used by the court has no foundation whatever. Is this not a conclusive answer?

Not only is this so, but in using this language and reaching the conclusion there stated, the Court of Claims, I submit, falls into an error which is contradicted and corrected by its own finding of fact No. 37, Record, p. 90, where, in speaking of the award, the court finds as a fact that there is no evidence tending to show that the award was the result of *surprise* or MISTAKE on the part of the Senate, or of *any member thereof*, and that its consideration was full, fair, and impartial, and it is a conclusion also which is at war with the express letter of the submission as contained in article XI of the treaty of 1855.

Look, for a moment, to this point of the Senate's misapprehension of the submission. The words of that submission in article XI (see Record, p. 97) are:

"FIRST. Whether the Choctaws are entitled to or *shall be allowed* the net proceeds?"

The Court of Claims found, in effect, that this provision this submission in the disjunctive, "*or shall be allowed*," was inoperative and nugatory. The Committee of the Senate, in finding No. 43, shows conclusively that these words in the disjunctive "*or shall be allowed*" were, in making the treaty, carefully considered, and that they were, and are designed to be, operative words, and to give to the Senate the power and discretion to determine on principles of equity, "fairness, and *liberality*," whether it was equitable to "*allow*" the net proceeds, and, as already remarked, I submit that the discussion contained in said report (finding No. 43) is irresistible, in its showing that though the Choctaws not, on legal and technical principles, possessed of the "title" to the net proceeds, yet these ought in equity to be "allowed."

But, under another head, I shall come again to this question whether the award was based on any misapprehension of the submission, or on considerations of mere "policy."

Here, then, I leave this question, the main one in the case, namely, whether the jurisdictional act is one which repudiates the main article of the treaty and the award of the Senate thereunder. I leave it with the utmost confidence that it is impossible to reach the conclusion that such repudiation is found in the jurisdictional act.

II.

FACTS REVIEWED DE NOVO DO NOT JUSTIFY VACATING THE AWARD.

I now proceed to the next question in the case, taking the questions up in the logical order which I have prescribed to myself. I have, I submit, shown that the act of 1881, under which the suit is brought, and the bringing

of such suit, do not have the effect which the court attributes to them, to wit, the effect (adopting the language of the court, Record, p. 104) of requiring the court to—

"Hold that under the peculiar provisions of the act giving us jurisdiction, as we have held in substance on the demurrer, that the sanctity of the adjudication of the Senate has been *destroyed* by the law of our jurisdiction; and that the parties are remitted to their legal rights as they existed, *unaffected* by the action of the Senate."

I have, as I think, further shown that the true interpretation of the jurisdictional act is one which, *at most*, authorizes the court to review the question of the alleged binding force of the award, as such awards are liable to be reviewed upon the general principles of law and equity thereto applicable.

This brings me to the question whether there is that in the case, the facts as found by the court being reviewed *de novo*, which will justify the court in setting aside the award. And this question of the right and duty of the court to set aside the award, is one which brings the court to the question whether the transactions found as facts, by the Court of Claims, constituted, upon the principles of law and equity, a good *release* of the fourteenth-article and other claims of the Choctaws? The Court of Claims found that these transactions, which arose under certain acts of Congress, did, as a matter of law and equity, constitute a binding release as against all the fourteenth-article claimants, except the 191 rejected claimants whom the court held not to be parties to the release executed under the act of 1852.

I come, therefore, now to the question whether, upon principles of law applicable to this case, that release is binding.

It is true that even if that release was binding, independently of the provisions of the treaty of 1855, yet I shall show

that that treaty delivered the Choctaws from the binding force of the release.

STATUTES INVOLVED IN THE ALLEGED ACCORD AND SATISFACTION.

It is proper, as enforcing, in every view, the right of recovery in this case under the fourteenth article, to show that, independently of the effect of the treaty of 1855, there is *not* any binding release of the fourteenth-article claims established by the transactions which arose under the said acts of Congress. These acts of Congress, under which it was found by the Court of Claims that a valid release of the fourteenth-article claims was effected, are as follows:

The act of March 3, 1837, (5 Stats., 181,) being an act providing for the inquiry as to the extent of the failure of the defendant in fulfilling its treaty obligations.

The act of February 22, 1838, (5 Stats., 211,) being an act amendatory of said last-named act.

The act of August 23, 1842, (5 Stats., 513–516,) being an act providing for the satisfaction of claims arising under said fourteenth article, and which will be fully noticed as I proceed.

The act of March 3, 1845, (5 Stats., 777,) being an act in regard to the delivery of scrip under said act of 1842.

The act of July 21, 1852, (10 Stats., 19,) being an act stopping interest on the scrip annuities, and directing payments of the principal of said annuities, and providing for the release.

There are several legal propositions bearing upon the question of the alleged validity of the release which the court below found to have been accomplished by the transactions which arose under said acts of Congress, which it is essential should now be carefully presented to the attention of the court. One of these legal principles I state thus:

CONGRESS CANNOT, BY REPEAL OF "TREATY PROVISIONS," DIVEST PROPERTY RIGHTS.

Wherever rights of property are secured by the terms of a treaty, it is incompetent for Congress, without the consent of the other party to the treaty, to repeal or impair the property rights so secured by a treaty. It is proper carefully to observe that this proposition just stated is not at all in conflict with the law laid down in such cases as the "Head-Money Cases," 112 U. S., 597, and the cases there recited and reviewed.

These decisions affirming the power of Congress to repeal treaties, so hold only in regard to the future operation of the treaties, and do not intimate that *rights of property*, or rights compensated for by mutual covenants and acquired in virtue of an existing treaty, and which rights attached *before* the repeal of the treaty, can be, by the legislation of Congress, divested. On the contrary, the "Head-Money Cases" carefully recognize the opposite doctrine. For example, the court states the case of descents cast upon an alien, in virtue of an existing treaty and other like property rights, and as to such property rights so acquired, in virtue of a treaty before its repeal, the court is careful to say (p. 598–9) that—

"When such rights are of a nature to be *enforced* in *a court of justice*, that court resorts to the *treaty* for a rule of decision for the cases before it, as it would to a statute."

Indeed, this doctrine of the non-competency of an act of Congress to divest property rights, acquired under a treaty, without the consent of the other party to the treaty, is carefully asserted even by the Court of Claims. At the bottom of page 115 the Record of the Court of Claims states as follows:

"The authorities are many that the terms of a treaty

cannot be changed or affected by the act of one party to the prejudice of the other, and unless the fact that the Indians, whose applications were rejected by the Board, *consented* to the imposition of the new conditions, they have a present right to insist, through the claimant, upon the letter of the treaty."

The court then cites Mitchell *et al. v.* U. S., 9 Peters, 711, 749, 755; U. S. *v.* Brooks, 10 How., 460; Crews *v.* Burchan, 1 Black., 356; Eastern Band of Cherokees, 20 C. C., 449.

In the case of Mitchell *v.* The United States, this court declared that the treaties, existing with the Indians in Florida, before the acquisition, by the United States, remained in force after the acquisition, and

"Were binding on the United States by the obligation they had assumed by the Louisiana treaty, as a supreme law of the land, *which was inviolable by the power of Congress.*" (9 Peters, 714.)

In the case of The United States *v.* Brooks, 10 How., 442, the court held that a grant of lands, by treaty, to the Grappes Indians conveyed a title which could not be divested by an act of Congress (of July 6th, 1862, 5 Stats., 491,) confirming the lands to other claimants.

Richart *v.* Felps, 6 Wall., 160, 165, 170, presents a case where the treaty title had been confirmed to certain parties under the provisions of a treaty, this by an award made by Governor Sinclair.

After this confirmation, Congress passed a law constituting a commission to retry the question of title established by the decision of Sinclair. The commission decided against the title established by Sinclair, and, under the act of Congress, a patent was issued to the party claiming under the decision of this commission. This court repudiated this legislation of Congress in these words:

"Congress is *bound to regard the public treaties*, and it had

no power to organize a board of revision to nullify titles confirmed many years before by the authorized agents of the Government." (See reasoning of Havenstine *v.* Lynham, 100 U. S. R., 488, 489.)

It cannot be useful to multiply authorities upon this point. The rights of the Choctaws, under the fourteenth article, to the property secured thereby, ~~was~~ were granted upon full and ample consideration paid, and the reservations covenanted to them in article XIV conferred upon them strict, private property rights in and to the reservations therein secured. If those property rights have been divested, it is not in virtue of the *mere* mandatory provisions of the said act of the 23d of August, 1842, (5 Stats., 513,) or of the 3d of March, 1845, (5 Stats., 777,) or of the 21st of July, 1852, (10 Stats., 19,) which *assumed* to divest said property rights, and substitute in lieu thereof money and scrip without the consent of the Choctaws. To hold that Congress can abolish such vested property rights by a simple act of legislation, is to declare that Congress can divest titles without "due process of law," and is precisely what is denounced by this court as *repudiation* in the Sinking Fund Cases, 99 U. S., 719. And so the Court of Claims held, and therefore went to the question whether what was done by the Choctaws, under said acts of 1837, 1838, 1842, 1845, and 1852, constituted a "*release*" of their fourteenth-article claims, *voluntarily* made.

On this point the Court of Claims held that the act of receiving the scrip provided for by the act of 1842, and of receiving the $872,000 provided to be paid, as the amounts awarded to the claimants under the said article 14, in lieu of the scrip, awarded under said act of 1842, and the execution of the release provided for in the said act of 1852, constituted an assent binding upon the parties, and waived all right to the fourteenth-article claims. (See pages 112 and 113 of the Record.)

Why Receipt of Scrip and the Funding Money no Accord and Satisfaction.

My proposition, in answer to this position and holding of the Court of Claims, I state thus:

The condition of absolute want, helplessness, and incapability, on the part of the Choctaws, to resist compliance with the mandatory provisions of these several acts of Congress, as these existed at the date of the receipt of said scrip, of said money, and of executing said release mentioned in said act of 1852, was such, and their relations to the Government of the United States were such, at the date of these transactions, and the shocking inadequacy of the consideration for the release was such, that the acceptance of the said scrip and money, and the execution of said release, do not constitute a valid release, or an accord and satisfaction, under the principles of law applicable in such cases.

Upon this point, without elaboration, I state the following propositions, derived from the face of the said acts of Congress, and from the facts found in the present case:

The Court of Claims erred in giving no effect to the relation of dependence, or wardship, existing, at the date of these transactions, between the United States and the appellant. (See Record, p. 102.) The court treated the language which this court has so often employed, upon this subject, as a mere sentiment, having no legal force or application in the courts.

This question of the relation of wardship and dependence of these Indian tribes has been by this court repeatedly asserted, and that, not for the purpose of dealing in mere sentiment, but for the important and strictly judicial purpose of rightly interpreting their contract and treaty rights.

The matter of this dependent relation I have already

alluded to. It came conspicuously before this court in the case of the Cherokee Nation *v.* State of Georgia, 5 Pet., pp. 1 to 17. Upon this point, and as aiding in determining the legal status, qualities, and rights of the Cherokees upon, and to, their lands in Georgia, Chief Justice Marshall uses these words:

"They" [the Cherokees] "may more correctly, perhaps, be denominated domestic *dependent* Nations. * * * They are in a state of *pupilage*. Their relation to the United States resembles that of a *ward to his guardian*.

"They look to our Government for *protection*. They *rely upon its kindness and its power;* appeal to it for *relief* to their wants, and address the President as their Great Father."

In Worcester *v.* State of Georgia, 6 Pet., 583, the court again alluded to these tribes as "not belonging to the Confederacy, but existing within it. and of necessity bearing to it a *peculiar* relation."

In the case of United States *v.* Forty-three Gallons of Whiskey, 93 U. S., 193, this court again comes to this subject, and in speaking of the language of Chief Justice Marshall in the case of The Cherokee Nation *v.* Georgia, 5 Pet., 1, and of Worcester *v.* The State of Georgia, 6 Pet., 515, the court says:

"Few of the recorded decisions of this court are of greater interest and importance than those pronounced in these cases. Chief Justice Marshall, in these cases, with a force of reasoning and an extent of learning rarely equalled, stated and explained the condition of the Indians in their relation to the United States, and to the States within whose boundaries they lived. * * * The only efficient way of dealing with the Indian tribes was to *place them under the protection of the General Government.* Their peculiar habits and character *required* this; and the history of the country shows the *necessity* of keeping them separate, *subordinate, and dependent.*"

It is upon this position of *dependence*, of *helplessness* and of

subordination to the guardianship and care of the General Government that the court here, and everywhere, bases the rightfulness and the policy of those provisions of law which relate to trade with, and protection of, these Indian tribes.

This helpless and dependent condition of the Indian tribes in their relation to the United States, and the guardianship of the Government over them, is again reasserted, and the case of Cherokee Nation *v.* Georgia reaffirmed, in the case of Elk *v.* Wilkins, 112, U. S., 100.

RELATION OF DEPENDENCE AND COVENANTED PROTECTION ARE EXPRESS IN THE TREATY, LARGELY CONTROLLING THIS CASE.

Again. The treaty, in which this fourteenth article is contained, is exceedingly explicit upon this point of the subjection and protection of this tribe. Article five (7 Stats., 334) expressly covenants "that the United States are *obliged to protect* the Choctaws from domestic strife, and from foreign enemies, on the same principles that the citizens of the United States are protected."

Article seven covenants that "all acts of violence committed upon persons or property of the Choctaw Nation, either by citizens of the United States or neighboring tribes of red people, shall be referred to some authorized agent, by him to be referred to the President of the United States, who shall examine into such cases, *and see that every possible degree of justice is done to said Indian party of the Choctaw Nation.*"

Article twelve of this treaty expressly covenants (7 Stats., 335):

"That all *intruders shall be removed from the Choctaw Nation, and kept without it. Private property to be always respected, and on no occasion taken for public purposes without just compensation being made therefor to the rightful owner.*"

It is thus, I submit, reduced to a clear demonstration, that, both by the general relationship of these tribes to the nation as wards, and by the express covenants of the treaty of 1830, this tribe was in a condition of helplessness and dependence, and was entitled, in virtue of express covenants contained in said treaty of 1830, to be guarded and protected against the very wrongs which robbed them of their lands guaranteed by this fourteenth article. And for the Court of Claims to say that this relation of helplessness and dependence and these obligations to protect are not to be taken into account in construing the effect of this release, and that the release is to be considered as if made between *equals*, dealing with each other "at arms length," is an utter disregard of the most important legal principle applicable to the interpretation of the acts alleged to constitute this release.

I may safely proceed, therefore, in considering the effect of these transactions alleged to constitute the release, with the assertion that both by the express covenants of the treaty of 1830, and by the settled authority of this court, the parties dealing with each other were, on the one hand, a helpless, defenseless, and dependent Indian tribe, in the condition described in finding 16, Record, page 72, and, on the other hand, a powerful and irresistible Nation, speaking and acting through peremptory mandates of *law*, directed to the inferior—the subordinate—the dependent—the ward; and that superior and irresistible Nation being at the same time under covenant to protect the dependent against the very wrongs alleged to be waived and released by the ward-nation!

Analysis of the Statutes and their Mandatory and Severe Character.

Keeping this relation, therefore, in mind, I next turn to the language of the laws addressed to these Indians, the

submission to which laws is alleged to constitute the release.

In the Brief, at pages 171 to 190, this matter is more fully examined than I can or need here do. It is sufficient for me to say as to the acts of 1837 and 1838, under which the first commissioners sat and made decisions as to fourteenth-article claims, were acts designed simply for the information of the Government in its future settlement with the Indians touching these reservations; and the appearance of the Indians before these commissions for the purpose of proving their claims, has no element of waiver of rights contained therein.

I wish, now, to direct more particular attention to the provisions of the act of 1842 (5 Stats., 513).

First, notice the flagrant violations of the treaty obligations which that act embodies. These will be found conveniently stated at pages 44 and 45 of the Record in the replication. I need not here allude to all of them.

The third section of the act (5 Stats., 514, 515) is the one that provides for issuing scrip in lieu of lands taken from the Indians. In defining who may be allowed this scrip, the first provision is that the reservee must either prove that he made his election, under article XIV, within the six months, or must prove to the entire satisfaction of the commissioners, and the Secretary of War, that he signified such intention within such six months; and if his name was not enrolled, that it was omitted by the agent. The hardship of this provision will be seen when we come to state what was found by the Court of Claims as the means resorted to by the Government, and its agents, to prevent the Choctaws from signifying this intention, and from having their names enrolled within the six months.

The second requirement of this third section, as a condition to receiving scrip, was the production of positive proof that the claimant *owned an improvement, and actually resided on it at the time of making the treaty*, unless it

should be proved that, prior to February 24th, 1836, the United States had disposed of the land, and that the reservee *was dispossessed by reason of that disposal.* This requirement is one flying in the face of the treaty; and even the Court of Claims found this to be in violation of the treaty, and for that reason allowed lands to the one hundred and ninety-one families of rejected claimants.

The third prerequisite to becoming entitled to scrip, under this third section, was that it should be made to appear that the claimant had not *received any other grant of land under provisions of any other article of the treaty.* This provision is also in lirect contravention of the treaty, no such condition being attached to the right to receive lands under the fourteenth article. The fourth condition precedent, required by this third section, to the right to receive scrip is, that the Indians had not *removed west of the Mississippi, but had continued to reside on the ceded lands.* This provision is also in equally flagrant violation of the treaty, because it contained no provision which deprived a Choctaw of his reservation in case of removal after five years. He was entitled to a deed in *fee-simple* for the reservation at the end of five years' residence on the land. The treaty only required him to reside there five years, then it entitled him to a patent in fee, and he could reside where he pleased thereafter, and still be entitled to the land.

When all these stringent proofs were made, then it was further provided, by this third section, that where it was found impossible, owing to a sale of the land by the Government, to give the reservee, and his children, the land he was entitled to, including his improvements, then it was made peremptory and mandatory that he should be allowed certificates for a quantity of land equal in area to the land of which he was deprived by means of the sale by the United States; but this allowance was of mere refuse

lands which had failed to sell at $1.25—lands subject to entry at private sale, and even these only in the States of Mississippi, Louisiana, Alabama, and Arkansas.

Then the sixth section made it mandatory to deliver this scrip to him, and that it should be delivered "*in full satisfaction and discharge of such claim.*"

The act of the 3d of March, 1845, (5 Stats., 777,) provided as to that half of said scrip authorized by the said third section of the act of 1842, which was *not* deliverable till the reservee had removed to the West, should not be delivered at all. It enacted as to this half that the amounts awarded for the said lands on which they reside, but which it is impossible for the United States to give them, shall carry interest at five per cent., which the United States will pay annually, to the reservees, under the treaty of 1830, respectively, or to their heirs and representatives, *forever*, estimating the land to which they may be entitled at $1.25 per acre.

It will be noticed that this act is also *peremptory and mandatory*, and gave no election in regard to taking this annuity in lieu of the scrip.

Next it will be observed that the act of July 21, 1852, providing for the said release, &c., (10 Stats., 19,) is a peremptory command, by Congress, that all interest on said scrip, funded by virtue of said act of March 3, 1845, should cease after the 30th of June, 1852.

It then directs that the Secretary should pay the owners of the scrip the amount awarded in each case, respectively, the amount appropriated not to exceed $872,000.

It then added the proviso that this payment and satisfaction of the awards of scrip should be first approved as a *final release* of the claims of such parties, under the fourteenth article of the treaty, by the proper authority of the nation.

Here, again, it is perceived that the Indians were not consulted with regard to the acceptance or non-acceptance

of this $872,000. All interest was peremptorily stopped, and the Secretary was peremptorily *directed* to pay the money upon the execution of the release.

Condition of Choctaws when these Statutes were enforced.

I now recall to mind the condition in which these Choctaws were at the time these severe and peremptory orders were issued against them by these laws of the United States. Remember that they were, in none of these laws, given any option. The mandate came to them in the form of positive and peremptory law. If they refused to obey the law, the consequences were impressed on the face of the act that they could have nothing, either land, or scrip, or money, or interest on funded scrip. The Court of Claims finds, in regard to their condition at the time of their receipt of these peremptory orders, as follows:

In finding 16 (R., p. 72) they find in these words:

"The claimants under the fourteenth article, the said Choctaw heads of families and their children, were reduced to a helpless condition of want, which rendered it practically impossible for them to contend with the United States in their requirement that the said Choctaw heads of families should accept and receive the scrip provided to be issued to them in lieu of the reservations by the act of 1842; and the said scrip and the money paid to redeem the same were taken and accepted because they were powerless to enforce any demands against, or impose conditions upon, the United States."

Again: Although the third section of said act of 1842 deprived the Choctaw of his reservation, unless he proved a continuous residence on the land, yet the twelfth finding by the court (Record, p. 71) finds in regard to this in the following words:

"Many heads of Choctaw families, who either signified their purpose to remain or were prevented from doing so

by the acts of the agents of the United States, were *driven from their reservations* by white settlers, and before any classification was made under any law passed by Congress, the lands of such reservees had *been sold to the number of eleven hundred and fifty, and such heads of families prevented from securing their claims under the fourteenth article.* Said eleven hundred and fifty Choctaw heads of families had 1470 children over ten years of age on the 27th of September, 1830, and 1219 children under ten years of age at that date."

Again: In finding 7, top of page 63 of the Record, the court finds that the United States agent, Ward, appointed to receive the election of these reservees, advised the removing agents to *threaten the Indians with punishment if they did not emigrate.*

Again: In finding No. 8 (Record, p. 66) will be found in the report of the Commissioners a further statement of the treatment and condition of these Indians. Among these statements is the fact that, in many cases, the reservees had removed from the lands occupied by them at the time of the treaty *in consequence of the settlement of the whites in their neighborhood.* Further, that "in a *great number of cases they have been wantonly abused and ill-treated*" *by the whites;* that "they *could not live in peace in the same neighborhood;* that large stocks of cattle and hogs, introduced by the whites, *destroyed their crops;* that *their houses and cabins were torn down, burned or taken possession of by them when they left home on their necessary hunting expeditions, or to seek employment in picking cotton;* that under these circumstances they were compelled, *in great number of cases, to remove;* that "many removed in consequence of reports circulated among them that the lands occupied by them had been *sold by the Government;* that "they knew from *bitter experience* that, whether true or false, they were at the *mercy of their white neighbors;* that "the instances are *not rare,* as the evidence abundantly shows, in which *families have been wantonly driven from their homes, and have, for several years, been wanderers, living about in all seasons, in open camps, and*

seeking a precarious subsistence which scarcely sufficed to keep them alive."

In finding 9 (Record, page 66) it is found as a fact that the agent, Ward, appointed to receive the election of these Indians, did not open his office until the latter part of June, when four out of the six months allowed to the Choctaws for making their election had expired. It is there further found that Ward was unfit for the duties of this station; that his "acts" were calculated to deter the Indians from making application; that he was *abusive* and *insulting* to them, *intending* thereby to *prevent* them from making applications under said article, and necessitate their going west of the Mississippi.

In the same finding (Record, 67) it is found as a fact that the United States agents insisted that all reservees whose names were not registered *should go West*, and if they did not, *the soldiers would be sent to drive them out; that they would take their children from them; and many other threats were made by them.*

In the same finding it is found that, on the 31st of July, 1838, notwithstanding all this violence and outrage and endeavor to drive them off, *five thousand remained in Mississippi, and were there asserting their intention of claiming the benefits of the fourteenth article.*

Again: In finding 14 (Record, page 71) it is found as a fact that the heads of families who received the scrip authorized by the said third section of the act of 1842, "were REQUIRED by the United States to receive and accept" the said scrip "in lieu of the reservations of land to which they were entitled under the fourteenth article of the treaty." (Record, 71.)

GROSS INEQUITY OF ALLEGED ACCORD AND SATISFACTION.

Once more. I beg the attention of the court to the extreme injustice and inadequacy of *consideration* on which this pretended accord and satisfaction is based. The lands

of which the fourteenth-article claimants were deprived were the choice lands of the country. In the reports found as facts by the Court of Claims, it will appear that these lands were worth, on the average, at least five dollars per acre. See finding No. 43, Record 94, at pages 128 and 129 of appendix to brief. The Court of Claims found them to be worth, in 1830 and 1831, on an average, $1.85 per acre. (Finding 29, Record, p. 85.) They were more valuable in 1836, the date at which they were entitled to the patents, and on which we insist the value should have been made.

In finding 30, (Record, 85 and 86,) the court finds the value of this scrip (as near as it could be ascertained) in finding as a fact a return made on this subject by the Commissioner of Indian Affairs in 1856.

Treating the 119,360 acres of scrip, which by that report it appears the Indians gave away (in paying lawyers whom they were compelled to employ, owing to the outrages and hardships to which they were subjected by the Government), as having realized them nothing, as it should be treated, and taking what was realized, as shown by said report, on the balance of the scrip which was sold, and the amount realized per acre was 21.549 cents.

Treating that paid to the lawyers as having realized to them the same as that which was sold for money, then the amount realized for the scrip was 41.0026 cents on the average.

The result we have, then, taking it the most *favorable* for the Government, is as follows:

For the part of the scrip that was funded, at $1.25 per acre, the loss—treating finding XXIX as right—to the Indians on that half was 60 cents per acre. On the other half, the loss was the difference between 41 (finding 30, R., 85, 86) cents and $1.85, to wit, $1.44 per acre.

I now summarize a statement of the value, per acre, of

these reservations, as such value is derived from various sources.

As already remarked, the quantity of acres lost by these wrongful sales of the Government was 1,404,640 acres. (Finding 14, R., 71.) One valuation of these lands I have already stated, as found in the report by Senator Sebastian, on which the award was based, (p. 128 of Appendix,) where he says, speaking of these lands, that they were worth "on an average perhaps not less than $5, and much of it still more."

1,404,640 acres, at $5 an acre, produces an aggregate of	$7,023,200 00
The total amount realized for this land by the Choctaws, taking the value of scrip delivered at 21 cents an acre, (which treats that paid to lawyers as lost,) and the value of the scrip funded, at $1.25 per acre, and you have an aggregate of	1,019,016 80
Making a loss, if the lands are treated as worth $5 an acre, of	6,004,183 20
If the half of the scrip delivered is treated as worth 41 cents, then the aggregate realized for all scrip, including the funded part is	1,159,032 80
Making the loss, if the lands are treated as worth $5 an acre, and the scrip delivered as worth 41 cents, of	5,864,168 20

Another method of getting at the value of reservations lost is to take the value of the orphan lands, which are mentioned in finding 22. An inspection of that finding will show that, of these orphan lands, there were 134 quarter sections; that these quarter sections were required to be selected of "*average quality and value*," (R. 74, fol. 112), and that they *were* selected "of as nearly an average quality and value with the other locations as practicable." (Record, p. 74.)

The record of the Court of Claims shows that these orphan lands were appraised, in 1836, by commissioners appointed for that purpose, at prices which averaged $8.50 an acre.

It will be further seen by the record of the Court of Claims that they were sold, in 1838, at auction, at prices which made the average per acre $6.42. (Record of Court of Claims, 1147–1152.)

It will also be seen by the findings of fact (R., p. 92) that the amount realized from these sales of orphan lands, after deducting all expenses, was $120,827.76.

The number of acres producing this net aggregate was 21,440, so that the net amount actually realized, after deducting all expenses, by the orphans from these lands, was $5.63 per acre.

Again, two witnesses were examined by the claimant who were familiar with the value of these lands in 1836, to wit, E. S. Mitchell and Joseph Hodges.

Mitchell's estimate of the value of these reservations per acre was, "at least three dollars ($3) per acre." (Court of Claims Record, pp. 1429, 1430.)

Hodges' estimate of the value per acre was $5. (Court of Claims Record, pp. 1678 *et seq.*

Again, the Court of Claims, in finding No. 29, (R., 85,) finds the average value of the lands ceded by the treaty of 1830, and to which the reservations provided by the treaty apply, was, in 1830 and 1831, $1.85 per acre.

It will be perceived that this finding, independently of the other evidence to which I have alluded, does injustice to the Choctaws in two particulars:

1. That it does not find the value of the lands at the time the Choctaw reservees became entitled to their patents in 1836, and when the lands were more valuable than in 1830 and 1831.

2. The other injustice is, that it finds the average value per acre *of all the lands ceded*, whereas the reservations were obviously the choice lands, and contained the improvements of the Indians; and they ought not to be reduced to that average value which is obtained by including *all the refuse or worthless* lands included in the entire cession.

Now, if the court will take, out of the various proofs of value per acre above stated, the following, to wit: first, the appraisement of the orphan lands in 1836 at $8.50 per acre; second, the net proceeds realized from the sale of the orphan lands, as shown on page 92 of the Record, to wit, $5.63; third, Sebastian's estimate of $5 per acre; fourth, Hodges' estimate of $5 per acre; fifth, Mitchell's estimate of $3 per acre; sixth, the Court of Claims' finding of $1.85 per acre,—and add these six estimates together, it produced $28.98; and dividing this by the number of estimates, to wit, six, and you obtain, as an average of the estimates, the price per acre of $4.83.

Taking this average value of the six estimates, the aggregate value of the 1,404,640 acres, amounts to	$6,784,411 20
If from this aggregate is subtracted the value of the scrip delivered at 41 cents, and the aggregate of the funded half, $872,000, the two amounting to	1,159,032 80
and subtract this last amount from said sum of $6,784,411.20, shows a loss of	$5,625,378 40
Again: If you estimate the value of these 1,404,640 acres of reservations taken from the Choctaws, and sold by the Government, at $1.85 an acre, you get the aggregate value of the lost lands, equal to	$2,600,584 00
If you subtract from this, the aggregate value, at 41 cents per acre, of the scrip delivered, plus the $872,000 paid for the funded half of the scrip, the two making	1,159,032 80
You obtain as the amount lost	$1,441,551 20

And this includes no interest.

Such, may it please the court, is the exact substance of the facts relied upon by the Court of Claims as those which constitute, on the part of the Choctaws, an "accord and satisfaction" as to these fourteenth-article claims, and make the release of November 6th, 1852, (Record, pp. 7, 74 and 75,) finding 23, executed under the said act of 1852, to be a bar to the fourteenth-article claims.

Foregoing Transactions do not, in Law, Constitute Accord and Satisfaction.

My proposition of law, based upon these facts, is that these transactions do not constitute an "accord and satisfaction," and would not work such an "accord and satisfaction" as between the United States and a citizen, and, much more, not between the United States and this subject and dependent tribe.

Preliminary Points as to Question of Valid Release.

In now presenting to the court the authorities upon this point, as to whether, judicially viewed, these transactions, which occurred under the said acts of 1837, 1838, 1842, 1845 and 1852, do, as against the Choctaws, make out a valid release of the claims named in said release found in finding 23, (R., 74,) it is essential to premise some preliminary propositions, which I beg to fix in the attention of the court.

First. The first of these propositions is that it is no part of our claim, regarding these statutes, that it was within the duty or the power of the executive officers, charged with the execution of the various provisions of these laws, and with the taking of said release, to treat such laws as either violative of treaty rights or as unjust, or as inoperative. As between these laws and the officers charged with the execution of the ministerial functions they impose, our

position is, on the contrary, that it was their plain duty to execute the statutes, and it was not within their duty or power to judicially sit upon or decide regarding the binding force of the laws or of the said alleged release or compromise. (Campbell *v.* United States, 107, U. S. R., 411, 412.)

Second. Again, it is essential to further premise that, in the absence of leave to do so from Congress, it was absolutely beyond the power of the appellant, and of each individual of the tribe, to assert, in any court, any demand, as against the United States, of any of their alleged rights involved in these transactions, or to bring any suit calling in question either the validity of such laws or either of them, or any part thereof, or any action raising the question of their right to refuse to obey these laws, or asserting their claim that the release was either unjust or not valid. These Indians were, in these regards, utterly remediless, as well as destitute of all power of resistance, as found in finding 16.

Third. Another preliminary matter, to be carefully remembered, is, that it was because of these conditions of helplessness, of all absence of remedy in the courts, and of abject destitution and dependence, that the fact becomes utterly insignificant, which is so relied upon by the court below, (see R., pp. 112, 147,) in its attempt to put the Choctaws in a position of *equality* with the Government, to wit, the fact that in some of these transactions they had the aid of counsel.

This presence of counsel, procured for the purpose of aiding in getting the pittances allowed by these laws, was not of the slightest value to the Choctaws in the way of aiding them either to resist the execution of these statutes, or in the way of securing to them the trial in the courts of any of their supposed rights. Counsel could, in the very nature of the case, do for them absolutely nothing, either in counseling them to disobedience to said laws, or in

counseling them to test their force in the courts, or in counseling them to reject the poor means, tendered by these laws to them, of escape from starvation, or in counseling them to refuse to leave their homes. With the aid of all the counsel in this country, the Choctaws were as powerless to assert any of these rights, as against these statutes, as they were to arrest the course of the winds, or of the tides. And so it is, in substance, found, as a fact, by the court below in finding 16.

Fourth. But so far as the right to test, judicially, the validity of this alleged release is concerned, all this is now changed. It is changed by the fact that Congress has now, for the first time, opened the doors of the courts to this people, and these transactions, alleged to constitute the release, are now, for the first time, directed, by Congress, to be tried by the morality and the light of judicial science; and the force of these transactions, as a compromise, is now, for the first time, to be tested by the conscience and the morality of the law applicable to all the people.

This last proposition, that your trial, as affecting the rights of the Government and the force of this release in its favor, is to be conducted as if the Government were an individual, and as if an individual had inflicted the wrongs above named, and were the author of the edicts promulgated by these statutes against the Choctaws, is thoroughly familiar law.

This was recognized by the court below, and it cited to that point in the case of Floyd Acceptance Cases, 7 Wall., 676.

The doctrine of those cases, touching this point, has been often repeated and enforced by the courts in every possible view of this matter of the *status* of the Government in suits where the Government has, in any way, consented to become a party.

This subject is carefully and strongly considered by Justice Field, in United States *v.* Flint, 4 Sawyer, 43.

The substance of the rule on the subject is thus expressed:

"When the United States voluntarily becomes a suitor, it stands upon the same footing as private individuals. The Government cannot have relief which it would be inequitable to grant, against individuals."

See, also—

United States *v.* Union National Bank, 10th Benedict, 408.

Fendall *v.* United States, 14 C. C., 247.

United States *v.* State Bank of Boston, 96 U. S., 30.

And see the further cases cited in Fendall *v.* United States, 14 Ct. Cl., 251, 252.

Fifth. A still further, and perhaps the most important preliminary suggestion bearing upon the matter of whether this release is, in this trial, to be dealt with as *conclusive* on the court, is that both the jurisdictional act and the treaty of 1855 show, by their terms, that they were made *on purpose* to do justice to the Choctaws, as such justice was required by the "treaty stipulations," and on purpose to remedy and relieve against the shocking injustice inflicted under the acts of 1842 and 1852. So far as the treaty of 1855 bears on this proposition I come to that hereafter and specially. My suggestion *now* especially is to say that the jurisdictional act is most careful to say that the basis of this trial is the "treaty stipulations," and not statute stipulations. For this trial, and in now opening for this redress, the courts, Congress has carefully ignored these statutes which inflicted the outrages meant to be redressed in the courts, and sent the courts *directly back* to the original source of the Indians' rights as found in "treaty stipulations." Hence, in deciding whether the release called for by said statutes should, in this trial, be held to be an "accord and satisfaction," you can give no force to the com-

mand of a statute making the release conclusive, *if* said treaty stipulations and the "liberal" justice they *command* stand in the way of, or forbid, the enforcement of such release.

I beg the court now to group together all the elements which go to make up this alleged accord and satisfaction—this release.

Here was, on one side of this alleged compromise, the fragments of an Indian tribe. That tribe is, by the treaty of 1855, in its eleventh article, certified to have ever been good in conduct, faithful in services, patient in submission to sacrifices. To that people the treaty of 1830 had solemnly covenanted that the United States would protect them in their property, their possessions, and their peaceful residence—protect them from and against all intrusion, invasion, molestation, and wrong-doing; that their property should he held to be sacred—as sacred as that of the citizens of the United States, and equally under the protection of the Government, and "*on no occasion taken for public purposes without just compensation being made therefor to the rightful owner.*" (7 Stats., 335.)

Then, and instantly after the making of this treaty, began those years of most wanton, causeless, and unchecked outrage and robberies described in the findings of fact Nos. 8, 9, 12, and 16, robberies conducted under the affirmative instructions of the very agent, Ward, who was sent to secure and protect them in these treaty rights—outrages prosecuted by the entire white population of their region, and consummated by the Government itself in the sale, in admitted violation of the treaty, of their lands to the enormous extent of 1,630,400 acres, as shown in findings 13 and 14, Record, p. 71.

Under the operation of these cruelties so persisted in for these years, this fragment of the broken tribe so hunted, pursued, and outraged, came to the condition in which they are described at page 66 of the Record. There they

are described as "wantonly abused and ill-treated"—"crops destroyed"—"houses and cabins torn down, burned"—"homes taken possession of"—"driven out of their country"—"threatened with the military"—"whole families wantonly driven from their homes"—"wanderers for years, living about in all seasons in open camps, seeking precarious subsistence which scarcely sufficed to keep them alive"—"driven to the swamps, with their women and children;" stealing thence, in the night, to their own cornfields to obtain food—seized by the military, thrown into wagons; chained like pigs; reduced to a condition of abject wretchedness and poverty; fugitives and vagabonds, without homes, without protection, and without food.

When in this condition a law is passed commanding that they shall receive in lieu of this 1,404,640 acres of land, worth, on an average, even according to the findings of the Court of Claims, $1.85 per acre, scrip, which realized, at the utmost, to them, as to the one-half, 41 cents an acre; as to the other, funded at $1.25 per acre. This they are commanded to receive by a peremptory law of the nation that had reduced them to this condition, and to "RECEIVE IN FULL SATISFACTION" FOR THESE LANDS, or else receive nothing, and to execute a release of all claims for said 1,404,640 acres.

In view of these facts thus inadequately grouped, well might the Court of Claims find, as it did find, that this people—

"Were reduced to a helpless condition of want, which rendered it practically impossible for them to contend with the United States in their requirement that the Choctaw heads of families should accept and receive the said scrip provided to be issued to them in lieu of the reservations by the act of 1842; and the said scrip and money paid to redeem the same were taken and accepted by them, because they were powerless to enforce any demands against, or to impose conditions upon, the United States." (Finding 16, Record, 72.)

And the question of law which I am brought to by the considerations and facts just stated is, whether such a release so executed under these conditions is, in law, a good compromise—accord and satisfaction—release.

I think it is not too much to say that if it be good according to our law, then it is an element of our law which would be a reproach to a condition of barbarism.

But such is not the state of our law. And I turn now, for a few moments, to the enforcement of this last proposition.

Direct Authorities as to the Release.

With the foregoing enumerated facts, statutes, and preliminary points kept carefully in mind, I now go to the direct authorities upon the point. Do these transactions, viewed in the light and tested by the morality of the law, constitute a good accord and satisfaction?

There is, I think, no case of commanding authority in existence which so fully answers this question as does the valuable opinion of this court in the late case of Swift Company *v.* United States, 111 U. S., 22.

I so think, not merely because it is the decision of this court, but also because of some of the characteristics of that case, to which I now beg leave to point.

Of these characteristics I select the following:

1st. That case of Swift was, like this case, a case of alleged accord and satisfaction.

2d. Like this case, it was in that a series of releases, made in writing, which was claimed to constitute the accord.

3d. Like the present case it was a case where the release was made to, and in favor of, the United States, covering moneys actually owing by the Government.

4th. Like this case it presents a case where the releases were *demanded*, and were demanded by officers of the

United States claiming to be acting under the requirements of statutes.

5th. It was a case, like the present, in that there was no claim that the officers, taking the release, did not act *bona fide*.

6th. As in this case, so in that, the releases were express and unambiguous, and discharged the claims sued for.

7th. Like the present case, so that of Swift was a case where the release was made without any protest.

Such are some of the similarities in the leading features of the two cases. But the case of Swift differed from the present in several essential particulars, and in the particulars in which they differed the case of Swift made a stronger case for a binding release than is presented by the case at bar.

One of these differences was that in Swift's case the releasor was *sui juris*, and was, in contemplation of law, the Government's equal in intelligence and in the power of making choice between executing the release and not.

Another difference is that the courts were open to the Swift Company for the resistance and redress of the wrongful demand made upon the company, such redress being found in resort to mandamus in the courts against the officers in charge, for the purpose of compelling the performance of the ministerial act of delivering the quantity of stamps to which the releasor was entitled for the moneys he tendered or might tender. Whereas, in the case at bar, no court was open in any event for the assertion of any right or resistance of the demand for the release.

Another difference is that, in the case of Swift, the excessive demand submitted to was not, in the magnitude of money required, enormous, or such as shocks the conscience of the Chancellor; whilst, in the present case, the wrong enforced and the sacrifice made by the release

amount to millions of dollars, and consumed about the entire estates of the releasors.

Such are the general similarities and the general dissimilarities of the two cases.

With these general views of the two cases in mind, please look now at what is held in the Swift case and in the cases there reviewed and approved by this court, first noticing the Swift case itself.

There this court held that where it appeared that the Government, with power to compel obedience to a construction of the law "deliberately adopted," (p. 28,) and where the construction was erroneous, and the Government demanded obedience to that "deliberately-adopted" construction, and demanded a release by the citizen of moneys justly owing to the releasor, there the release was not binding, even though no protest had ever been made by the releasor nor by any party for some ten years previous, and where the releasor had, without protest, continued to bow to the demands of the Government, and at the end of each month had executed this release without protest.

It was the presence in the case of the *power* of the Government to enforce the release by refusing further stamps, and thus suspending the releasor's business, that the court made to constitute the *constraint*, and to take from this release the character of being "voluntary."

Now apply that principle here. What power, as against the Choctaws, did the Government hold over, and as to, the reservations covered by this release?

1st. The Government not only held the power to take from them these reservations, but it had already, in fact, taken them.

2d. It not only held the power to remove this people from their homes, but it had already either removed them or had, in large part, driven them to the condition of wanderers and vagabonds.

3d. It had not only the power to make and to issue *com-*

mands that the Choctaws should accept what the Government might choose to give for these reservations, giving in that command to the Choctaws no choice, but it had actually issued such commands in the shape of the statutes above enumerated.

4th. It had power to enforce these commands by the use of not only the executive forces of the Government, but also the military, and it had, at the date of the release, already actually enforced the exclusion of these reservees from the reservations covered by the release.

Then when it had reduced these people, by these means, to a condition of beggary and despair, it came to them, in the shape of a tender of what it chose to tender, but came with no choice between accepting the tender and executing the release, on one hand, and on the other hand the absolute and unqualified loss of every farthing of compensation for the reservations released.

It is, I confess, impossible for me to realize how it can be fairly said that the release in the case of Swift Company was *involuntary*, and the one presented at your bar in this trial was *voluntary*.

But pardon me for now proceeding, somewhat more in detail, to an inspection of the cases approved in this opinion, and some others.

Notice now what the cases cited in Swift Company, and approved by this court, establish as things which will take from a release, or from "accord and satisfaction," its voluntary character.

In Lose *v.* Phipps (7 Manning and Granger, 586,) [1842] was a case where the *constraint* which deprived a payment, illegally demanded, of its voluntary character, was simply that the mortgagee, holding a power of sale, refused to desist from making such sale unless a designated illegal exaction were paid.

In that case the Chief Justice (Tindal) said that the liability to incur the expense and risk of a bill in equity

was a sufficient constraint to deprive said payment of said illegal exaction of its character as voluntary.

In Parker *v.* Railroad Company (7 Manning and Granger, 293) the court held that yielding to illegal exactions by the company was not "*voluntary*" when the constraint was only the refusal of a common carrier to carry certain goods unless said illegal exactions were paid.

In deciding the case the court states the position of counsel to have been that the two parties to this transaction did not stand on "*equal footing*" (p. 293.)

And this view the court sustained.

The case of Tutt *v.* Ide (3 Blatchford, 249) is another of those approved by this court, where the authorities are somewhat fully reviewed, and the conclusion is reached that where a common carrier had agreed to carry goods at a stipulated rate, and at the place of destination refused to deliver them, except on the payment of a higher rate, and the owner of goods submitted to the exaction rather than to resort to replevin or other remedy, there it was held that the payment was involuntary.

The case approved by this court, in Swift's case, of Ogden *v.* Maxwell (3 Blatch., 319) is one holding that a protest was not necessary in order to recover money exacted by, and paid to, a collector, upon imported goods.

The broad principle is in this case laid down (pp. 323, 324) that—

"Any charges or costs illegally exacted by an officer, *colore officii*, may be recovered back from him, by the common-law action of an *indebitatis assumsit*. (Clinton *v.* Strong, 9 Johnson, 370.")

The next case approved, in Swift's case, by this court is Maxwell *v.* Griswold, 10 How., 242–245. The language quoted by this court, in Swift's case, from that, is exceedingly appropriate in the present case. There the court, in speaking of what kind of constraint, or force, or compul-

sion is sufficient to deprive a payment of being, in law, voluntary, uses these words:

"Now, it can hardly be meant, in this class of cases, that to make a payment involuntary, it should be by actual violence or any physical duress. It suffices, if the payment is caused, on the one part, by an *illegal demand* made on the other part reluctantly, and in consequence of that illegality, and without being able to regain possession of his property except by submitting to the payment."

This court adds a citation of the cases from 98 Penn. St., 186; 15 Gray, 471; 106 Mass., 1; 12 Pickering, 7; 32 Vermont, 559, 566.

I especially beg the court's attention to this last cited case of Beckwith *v.* Frisbie, 32 Vermont, 566.

From that case this court quotes language, with approval, which has forcible application to our present alleged accord and satisfaction.

The words quoted are these:

"To make the payment a voluntary one, the parties should *stand upon an equal footing.*"

I have already pointed out the absolute helplessness of this people in their submission to the execution of the alleged release and their receipt of the scrip and money tendered by the aforesaid legislation of Congress, and we are relieved from all question regarding this position of subjection, helplessness, and inequality by the finding of fact by the Court of Claims, No. 16, already repeatedly cited, where they are found to have submitted to these "*demands*" of the Government "*because* they were powerless to enforce any demands against, or impose conditions upon, the United States." (R., 72.)

Again. This court expressly lays down the proposition which I have just stated from Ogden *v.* Maxwell, 3 Blatch., 319, which it expresses (top of p. 30) in these words:

"If a person illegally claims a fee, *colore officii*, the pay

ment is not voluntary, so as to preclude the party from recovering it back."

To that proposition this court cites Morgan *v.* Palmer, 2 Barnwell and Cresswell, p. 729.

Again. This court lays down another legal principle having great force in its application to the present alleged accord and satisfaction. Speaking of the right of recovery by a party who has submitted to illegal exactions, the court says, quoting from Mr. Polock's work entitled "Principles of Contract," p. 523:

"But it is open to him to show that he supposed the facts to be otherwise, *or that he really had no choice.*"

The court cites, to the same effect, "Addison on Contracts." (Star p. 1043; Alton *v.* Durant, 2 Strobh., 257.)

Such, may it please the court, is the case of Swift Company *v.* The United States. It is a case which had come a second time from the Court of Claims to this court for consideration, and it resulted in a second reversal. It was, therefore, a case where the court evidently gave to the matter special consideration, and where the court's judgment was unanimous.

I venture to say that the authority of this case, and those therein approved, ought to be regarded as conclusive against the validity of this alleged accord and satisfaction. But I prefer to go on and present a further view of the cases.

In the case of The Union Pacific Railroad Company *v.* United States, (104 U. S., 666, 667,) this court fully and distinctly recognizes the doctrine that where a party bows to a mandate of the law, or of Government officers, subjecting the party to unjust, or illegal, or excessive exactions, there the yielding to the force of the demand, where there was no choice, does not work a release of the rights of the parties so submitting.

The court on this point says:

"The service cannot be treated as voluntary in the sense of submission to exactions believed to be illegal, so as to justify an implied agreement to accept the compensation allowed; for according to the terms of the obligation, which it did recognize and now seeks to enforce, *it had no option to refuse performance when required.* But it might perform, rejecting illegal conditions attached to the requirement, and save its rights."

So, pre-eminently, in the case at bar, the Choctaws had neither *power* nor *option* to retain their reservations and refuse the scrip, or to retain the scrip and refuse its funding or to refuse the giving of the release.

Again: In the case of The Chicago Railway Company *v.* The United States, (104 U. S., 680, 686,) this doctrine is still more strongly stated by this court. There the complainant company, which held a certain contract for four years of transportation of the mails at a designated rate, was ordered, by the Postmaster-General, to carry the mails at a reduced rate, and the company proceeded to perform the service under the order, but with protest. Regarding the question whether this was a voluntary performance and waived the four-year contract rights, this court says:

"And the performance by the company of the service required by its contract, notwithstanding the notice of the intended reduction of the compensation by the Postmaster-General, *cannot be construed as a waiver of its rights, or an acquiescence in the new proposals;* AND THAT WHETHER IT HAD PROTESTED AGAINST THE ERRONEOUS CONSTRUCTION OF THE LAW OR NOT. FOR IT HAD NO OPTION."

The case of Wheeler *v.* Smith, 9 How., 55, 81, 83, is a case presenting this question of the validity of the release in a legal aspect, somewhat different from those already noticed, wherein the invalidity of the compromise is based upon constructive duress, or the involuntary nature of the accord. But it is a case resting upon the same legal prin-

ciples with those considered. In that case the release was by a person *sui juris*, of mature years, and who was a lawyer by profession.

The release he executed was one made in consideration of $25,000 paid him, and the further consideration that the executors, who took the release, should release to the complainant (the releasor) all claims to any property settled upon the releasor by the testator during his life. The release was very deliberately made, and was executed in the most solemn form and under seal. The court set the release aside as void, and gave its reasons in these words, (pp. 82 and 83):

"The complainant, it seems, had studied law, but it is manifest, from the facts before us, that he was but little acquainted with business; was an inefficient and *dependent* man, easily misled, especially by those for whose abilities and characters he entertained profound respect. From the high character of the executors no one can impute to them any fraudulent intent in this transaction. Looking to what they considered to be the object of the testator, they felt themselves authorized, if not bound, to effectuate his purpose by making this compromise with his heir-at-law. They had no personal interest beyond that which was common to citizens of Alexandria. And we admit that they may have acted under a sense of duty from misconception of their power under the will. But in making the compromise the parties did not *stand on equal ground*. The *necessities* and character of the complainant were well known to the executors. Having the confidence expressed in the validity of the devise, they could hardly have felt themselves authorized to pay to the complainant twenty five thousand dollars for the relinquishment of a pretended right. Nor could they have deemed it necessary, in the agreement of compromise, substantially to constitute him the donor of the munificent bequest to the town and trade of Alexandria.

"We are to judge of this compromise by what is stated in the bill, the facts being admitted by the demurrer. And it appears to us that the agreement, under the circumstances, *is void*. It cannot be sustained on the principles

which lie at the foundation of a valid contract. The influences operating upon the mind of the complainant induced him to sacrifice his interests. He did not act freely, and with a proper understanding of his rights."

This case I bring to the court for the purpose of impressing more fully and carefully, upon the case at bar, the point as to the controlling force which is given to this fact, of the absence of "*equal footing*," as between parties to such release, and the presence of dependence, subjection, trust, inexperience, ignorance, necessitous condition, and the like, on the part of the releasor. I point to this case of Wheeler, for the purpose of saying, in the light of it, that there was, in the case at bar, not only an absence of "*equal footing*" which is so essential an element in determing the binding force of such compromises, but also that such absence of equality, and presence of shocking injustice and hardship, are, in this case, so palpable as to be clearly fatal to the release. I point to this Wheeler case for the purpose of saying of it, and of the case at bar, that if this court was required to treat the Wheeler release as void, because of this inequality of the parties to the compromise, then very much more is the court required so to treat the alleged release in the present case.

In view of what has now been gone over, regarding the invalidity of the release, I trust it is made sufficiently plain that, upon principles of the common law and of equity, it is impossible to hold that these transactions under the acts of 1837, 1842, 1845, and 1852, can be held, in a trial where the rights of the Government must be adjudicated as are those of citizens, to extinguish the rights and claims arising under the fourteenth article, which are set up in the petition; and I proceed, therefore, to the next prominent point in the case.

III.

Award not Invalidated under Review of Facts De Novo.

My next proposition is that there is nothing disclosed by this record, viewing the facts and law *de novo*, which justified the Court of Claims in holding that the award of the Senate can be ignored or set aside in this trial. I have already remarked that I shall come hereafter to the proposition that even if the release would be binding, in the absence of the treaty of 1855, yet that treaty sets aside the release in so far as it worked injustice.

But now my point is, that independently of the finality clause of the treaty of 1855, the award cannot be set aside or ignored in this trial.

Having shown that the release is inoperative and void, and that your judgment *must* base itself on justice as that is secured by "*treaty stipulations,*" and not by unconcionable statutory "stipulations," I next state that there is nothing in the record tending to show that the Senate, in making its award, either "misapprehended its powers" and duties under the submission, or that it reached a conclusion, in its award, which can be successfully assailed upon any known principles of law.

The facts, which I have gone over, show that so far as relates to the principles established in the award for settlement of the claims covered thereby, they more than justify the proposition that the Choctaws "*ought to be allowed*" the net proceeds which were allowed in the award. These facts gone over show, as was stated by the report in the light of which the award was made, that in any court of equity, in a cause between man and man, the recovery would have been more than double the amount which can be recovered upon the principles of the award.

I shall not further discuss the validity of the award, so far as it depends upon the *amount* which its principles secure.

Is there any other element besides the amount recoverable on the principles of the award in the record which shows that the award is invalid?

I have already, incidentally, directed attention to the fact that this submission is one carefully submitting to the Senate two questions. These are found in the eleventh article of the treaty of 1855. (See Record, pp. 15, 16.)

I have said that in answering the first of these questions so submitted, the Senate was not *confined* in the submission to the question whether the Choctaws were "*entitled* to the proceeds of the sale of the lands ceded by the treaty of 1830, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provision of the said treaty"; but that this first question also included and *required*, in the *alternative* and *disjunctive*, the Senate to decide as to whether they "*shall be* ALLOWED such net proceeds."

I have said that the Senate in deciding that they "shall be allowed" the net proceeds, had not exceeded the matters submitted. This is so self-evident and express in the submission that I shall not further dwell upon this point so incapable of being made plainer by argument.

Now, in view of what I have gone over, and of these terms of the submission and of the invalidity of the alleged accord and satisfaction, I ask what there is in the case to set aside the award?

The court below *hinted* (Record, top of p. 114) that but for the overthrow of the award by means of the court's construction of the jurisdictional act, and, further, were it not that the release and other transactions arising under said acts of 1842 and 1852 were held, technically, and independently of their abstract justice, binding, they would have decided, in regard to the claims alleged to have been

released just what they found in regard to the 191 "rejected claims" which the court found not to be within the release.

Legal Force of Awards.

I now desire to submit some authorities from this, and other, courts in regard to the powers and obligations of the court in dealing with this question of setting aside the award of the Senate.

Nothing is more familiar or more settled than is the proposition stated by Mr. Parsons (2 Parsons on Contracts, 6th ed., side page 697 *et seq.*) in these words:

"Generally, in the construction of awards, they are favored and enforced wherever this *can* be properly done. * * * If it be necessary to make a *presumption* on one side or the other to give full force and significance to an award, the court will incline to make that presumption which gives effect to the award, rather than one which avoids it."

So in Burchell *v.* Marsh, (17 How., 351,) this court says:

"*Every* presumption is in favor of the validity of the award. * * * But it cannot be *inferred* that the arbitrators went beyond the submission, merely because they may have admitted illegal evidence about the subject-matter of it. * * *

"Nor can the admission of illegal evidence, or taking the opinion of third persons, be alleged as a misbehavior in the arbitrators which will affect their award. If they have given their honest, incorrupt judgment on the subject-matters submitted to them after a full and fair hearing of the parties, they (the courts) are bound by it; and a court of chancery has no *right to annul their award, because it thinks it could have made a better.*"

So, also, the courts will always intend that the arbitrators have awarded upon all matters submitted to them, unless the contrary appears. (Mickles *v.* Thayer and

Another, 96 Mass., 122, and the cases there cited from 5 Cushing, 333; *ib.*, 129, 9 Cush., 545.)

In the case of Mickles *v.* Thayer, *supra*, it is further held that, in the absence of fraud, corruption or mistake, apparent upon the face of the award, the decision of the referees is final *upon the questions of law* as well as the questions of fact involved in the case.

This same doctrine, as has been seen, is laid down by this court in the case of Burchell *v.* Marsh, *supra*.

I need not, I think, detain the court further upon the question of the validity of the award, viewed independently of its alleged abolishment by the jurisdictional act, and independently of the question as to whether the submission embraced reservations covered by said release. I will come to the question as to whether the submission embraced these fourteenth-article claims when I consider, separately, the effect of the treaty of 1855 upon the present case.

I have shown that the submission expressly gave power to the arbitrators to decide the question whether the Choctaws "*shall be allowed*" the net proceeds of the land. I have thus shown that the Senate was empowered to answer this question in the affirmative, as it has done. These authorities, last cited, show that *every intendment* is made in favor of the award, and in favor of the assumption that the arbitrators acted within the scope of the submission. I have shown that the evidence more than justifies the Senate in answering the question, ought the Choctaws to be "allowed" the net proceeds, in the affirmative. I have shown, by the authorities cited, that both as to questions of law and of fact, the decision of the arbitrators is final and conclusive where the face of the award does not show its invalidity, and where there is no dishonesty, fraud, or corruption. I have thus shown that when the Senate decided the fact that the Choctaws "should be allowed" the net proceeds, they have decided it finally, and that this

court has no power to disregard that finding of fact merely because (to here adopt the words of this court, 17 How., 352) *it thinks it could have made a better decision.*

I conclude, therefore, this point in the discussion affirming the finality and validity of this award by resting such affirmation upon the following emphatic words from this court, (17 How., 349):

"Arbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. As a mode of settling disputes it should receive *every* encouragement from courts of equity. If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, A COURT OF EQUITY WILL NOT SET IT ASIDE FOR ERROR, EITHER IN LAW OR FACT. A contrary course would be a substitution of the judgment of the chancellor in place of the judges chosen by the parties, AND WOULD MAKE AN AWARD THE COMMENCEMENT, NOT THE END, OF LITIGATION. In order, says Lord Thurlow, (Knox *v.* Symonds, 1 Ves. Jr., 369,) 'to induce the court to interfere there must be something more than an error of judgment, such as corruption in the arbitrator, or gross mistake, either apparent on the face of the award or to be made out by evidence, but in case of mistake, it must be made out to the satisfaction of the arbitrator, and that, if it had not happened, he would have made a different award.'

"*Courts should be careful to avoid a wrong use of the word 'mistake,' and, by making it synonymous with mere error of judgment, assume to themselves arbitrary power over awards.* The same result would follow if the court should treat the arbitrators as guilty of corrupt partiality, *merely because their award is not such an one as the chancellor would have given.*"

In view of these thoroughly settled principles of law, and in further view of finding of fact No. 37, (Record, 89, 90,) "that the consideration which was given by the Senate to the subject-matter submitted to it by the said eleventh article of the treaty, and to the evidence which was so presented and taken and considered by the Senate was full,

fair, and impartial, and its adjudication as made under the said article was not influenced or affected by, and was in no way or degree the result of any fraud, corruption, partiality, and there is no evidence tending to show that it was the result of surprise or mistake on the part of the Senate, or any member thereof," I most respectfully and confidently submit that this award of the Senate *must stand and be executed as a solemn judgment of a competent court.* I submit that to ignore it or trample it down results in a breach of faith and a disregard of treaty obligations and of the sanctity of solemn and final adjudications, which are not tolerated by courts of equity, and such as has never yet been seen in the judicial history of this country.

IV.

Effect of Treaty of 1855 in this Case.

I proceed, now, to the question of the effect of the said treaty of June 22, 1855, (11 Stats., 611), upon the issues in this case.

The articles and the parts of that treaty which are brought in view as bearing upon the validity and present force of said award, are the following:

First. The preamble. (See Record, 15.)

Second. Article 9, (11 Stats., 613; Appendix, p. 22,) ceding to the United States the lands of the Choctaws west of the 100th meridian and leasing all west of the 98th meridian.

Third. Article 21, (Appendix, p. 24,) which makes said treaty of 1855 to "supersede and take the place of all former treaties between the United States and the Choctaws."

Fourth. Articles 11 and 12, which provide for the award and are fully set forth in Record, pp. 15 and 16.

Fifth. Article 14 of the treaty of 1830, which is fully

set out at page 5 of the record, and is the basis of the claims covered by said release.

The proposition which I now submit and base upon this treaty of 1855, I condense and carefully state in the following words:

That even if, but for the provisions of the treaty of 1855, the claims covered by said release named in Finding 23, would thereby, and in virtue of said transactions under said acts of 1837, 1838, 1842, 1845, and 1852, be barred, yet the Choctaws became, and, in this trial, are, in virtue of the said covenants and provisions of said treaty of 1855, and particularly in virtue of the provisions of said articles 11 and 12, entitled to have and demand settlement and payment, upon principles just, fair, and liberal, of all their alleged rights and claims, growing out of treaties, which were by the Choctaws asserted, set up, and claimed against the United States at the date of making the said treaty of 1855; and are entitled to have such settlement and payment freed from any and all estoppels, bars, waivers, or other defenses which the defendant, theretofore, might, in law and equity, have set up or interposed against the said Choctaws in virtue of any treaty, act of Congress, release or other thing done, by the appellant or by any individual of the nation, under such acts of Congress, and which defenses would be either unjust, unfair, inequitable, or illiberal; and that thus the treaty of 1855 destroys said release.

I now turn to an inspection, in detail, of the provisions of this treaty of 1855, for the purpose of ascertaining whether the proposition just stated is vindicated by that treaty.

Stated in another way, my inquiry is whether the effect of the treaty of 1855 is to remit the Choctaws to the consideration of their rights and claims viewed *in the light of the treaties themselves*, and independently of the transactions under said acts of Congress of 1842 and 1852.

In answering this question it will be essential, at the outset, to carefully ascertain what the matters were which

the eleventh article submitted to the Senate. The preamble in the eleventh article (7 Stats., 613, Record 15 and 16) recites "a claim," set up under the treaty of 1830 by the Choctaws. It says this claim is "earnestly contended for by the Choctaws as a rule of settlement." It declares that the government is desirous that "*that their rights and claims* against the United States shall receive just, fair, and liberal consideration."

Having made this recital, the eleventh article then provides that two named questions shall be submitted for adjudication to the Senate of the United States. These two questions are in these words:

"Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of lands ceded by them to the United States * * * deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that a final settlement with them may be promptly effected; or,

"Secondly: Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and if so, how much."

Then the twelfth article provides, in substance, that should the Senate award the net proceeds of the ceded lands, such net proceeds should be in full satisfaction of all claims against the United States, whether national or individual, arising under any former treaty, and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just.

It further provides that—

"So much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just

liabilities of the tribe shall, on their requisition, be paid over to them by the United States."

It then provides:

"Should the Senate allow a gross sum in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall, thereupon, become liable for, and bound to pay, all the individual claims as aforesaid, *it being expressly understood that the adjudication and decision of the Senate shall be final.*"

The question I am brought to now, regarding these articles 11 and 12, is, do they submit to the Senate the question whether this alleged settlement and release, executed under the provisions of said act of 1852, are just, fair, and liberal, and ought to be held to extinguish the fourteenth-article claims, covered by that release? Or, on the other hand, was the Senate given jurisdiction, under the submission, to consider the question of the equitable force of the release, and not bound to exclude these fourteenth-article claims from all consideration?

It will be a little difficult to condense into narrow space the answer to this question, owing to the voluminous character of the findings of fact bearing upon this question. But I shall attempt to condense the matter as far as is consistent with fairness and clearness.

Now, carefully notice, first of all, what the preamble to article 11 says the things are which are to be submitted. They are the "*rights and claims*" of the Choctaws against the United States. This is express. Further, the claims submitted are the claims "set up under the treaty of September 27, 1830," and *so earnestly contended for by the Choctaws* as a rule of settlement. The article therefore sends us, expressly and by necessity, to the question what it was that was "set up" and "earnestly contended" for at the date of making this treaty. It is plain and ex-

press that whatever those things were which were "earnestly contended" for, and which the article says were "*rights and claims*," were the things the Senate was to consider, and which were within the submission.

Now, what was, at the date of the treaty, contended for as the rights and claims of the Choctaws? The Court of Claims has found, as a fact, the inception of that contention, and has set such inception out in full. In finding 24 (R., 75) the resolution of the legislative council of the 9th of November, 1853, appointing the delegates, is given. They were the delegates who presented the "rights and claims," and "earnestly contended" for them, as stated in article XI.

In finding 28 (R., 79 to 82, inclusive) is given this initiatory or first communication, making that "earnest contention."

In that "contention" (R., p. 80, fols. 117, 118) you will find presented, pressed, and argued, in most forcible language, the injustice inflicted by the Government upon the Choctaws regarding these very fourteenth-article claims, and the claim of satisfaction, for this injustice, urged. They say, speaking of these fourteenth-article reservations:

"Their *reservations were sold from them* by the Government as public land, or they were *forcibly dispossessed of, or by threats and intimidations driven from them by heartless and lawless white men.* When these facts became known to the Government, justice required that it should *repossess* them of their property, but no effort for that purpose was made. They were told that their reservations were gone, and could not be restored.

"For years they were petitioners in vain for some just remuneration for their lost rights; and when, at last, a *law was passed* for an examination of their claims, it prescribed a course of adjudication of so *rigid and technical a character as necessarily to exclude many just claims.* Those that did not come within the *exact* measure of this *strict* and restrictive law were *rejected*, though, in *justice and equity, they were, under the circumstances, full as meritorious as those that were allowed.*

From lapse of time and death and dispersion of witnesses, cases that did not come within the specific requirements of the law could not be established.

"The investigation was such as could be *successfully met* only by *intelligent persons* familiar with judicial proceedings, and who had known from the first the importance of preserving and preparing for the establishment of every fact connected with the loss of their rights. *Not one* of the claimants *could meet* it without the assistance of able and astute attorneys, whom they were all compelled to employ, and to agree to pay *one-half* of what was recovered for them."

After fully reciting the grievances inflicted by the Government regarding these claims, and after reciting the action of the Government under said acts of Congress, they add this:

"The result is that those who have obtained *anything* have received the merest *pittance—a compensation wholly inadequate;* while there are hundreds whose claims are quite as just and meritorious as those that have been allowed that have never received anything."

This, may it please the court, was the great and, in magnitude, the overshadowing matter "so earnestly contended for," as recited in said article 11. So it is contended for in this initiatory paper leading up to the treaty of 1855.

This communication to the Commissioner of Indian Affairs was transmitted to the Secretary of the Interior April 13, 1854, (Record, top of page 83, also finding 25, Record, 47,) and the Secretary referred the same back to the Commissioner of Indian Affairs, who, on the 20th of April, 1854, instructed the United States agent, Cooper, to make the requisite inquiry and investigation to ascertain the character and extent of the claims, and what arrangement was necessary to accomplish the object.

Then, in finding 26, (Record, 77,) is given the report of the said agent of the United States, Cooper, for the Choctaws.

Please observe that what Cooper was instructed to find and report, as found in finding 25, (Record, 77,) was (quoting now from the finding of facts) "*to ascertain the character and extent of the claims.*"

Then again observe, at the end of finding 26, embodying this report of Cooper, what the Commissioner of Indian Affairs says about it. Speaking of the report to him by Cooper, he says:

"I have examined this statement carefully, and from the most reliable information I am possessed of, obtained in the Choctaw country and here, I am inclined to think *that part of it, embracing the extent of the obligations under the treaty, is as nearly correct as it could be made at this date.*"

Turn now to Cooper's report. In that report you will find that these fourteenth-article claims, covered by the alleged release, are fully considered and estimated for. Take from that report the following extract:

Settlement on the Principle of Allowing Net Proceeds of Lands.

Total number of acres ceded to the United States under treaty of 1830, at $1.25 per acre, net proceeds at $1 per acre		$7,796,000 00
Deduct for scrip paid	$1,740,000 00	
Reservations secured	300,000 00	
Money and other articles paid	2,178,529 00	
		4,218,529 00
Balance net proceeds		$3,577,471 00
CR.—By unsaleable lands, at 62½ cents per acre		1,288,735 50
Balance due Choctaws		$2,266,735 50

Thus, you see, incontestably, that the great and overshadowing claim "earnestly contended" for at the beginning of these negotiations was these fourteenth-article

claims, estimated by Cooper at $2,266,735.50, and this according to the interpretation of the *claim of the Choctaws made at the time*, by the Government itself.

In finding 28 (Record 84, fol. 121) it will be seen the court find that these negotiations were terminated on the 25th of September, 1854, by the Secretary's refusal to continue them.

On the same page it will be found that these negotiations were *resumed* April 9th, 1855, "*at the instance of the United States*, and that, on that date, the Choctaw Commissioners were addressed, by the agent of the United States," in a communication quoted from on said page.

This communication asked the Choctaw delegates "what arrangements, if any, can be made with them having in view the adjustment of *all* differences between their tribe and the Chickasaw tribe of Indians, *the Government of the United States*, and the permanent settlement of the *Wichita and other bands of Indians in the Choctaw country*."

It is important that the court should here observe that a totally *different and additional* element and consideration entered this renewal of the negotiations from what had entered into the negotiations which were terminated by the Secretary September 25th, 1854. The Choctaws were *now* required to state on what terms they would settle "*all differences* between their tribe and the Chickasaw tribe of Indians *and the Government of the United States*, and the permanent settlement of the Wichita and other bands of Indians in the Choctaw country."

This settlement of other Indians in their country was *not* within the contemplation of the negotiations of 1854, which terminated September 25. Hence the Secretary might *well assent* to the retrial of the released fourteenth-article claims, (although he had previously terminated negotiations) owing to the *additional* considerations *now* demanded, and which were in fact conceded in article nine of the treaty of 1855.

How did these renewed negotiations terminate? This

is answered by the findings of fact, (Record, bottom of 84 and top of 85,) where the court finds:

"The negotiations commenced on the 5th day of April, 1854, were suspended in September, 1854, but were renewed on the 9th day of April, 1855, and continued until the 18th day of June, 1855. The negotiations between the Choctaw Commissioners, on behalf of the Choctaw Nation, the Commissioner of Indian Affairs and the Secretary of the Interior, on behalf of the United States, were conducted with reference to the accomplishment of the following objects:

"*First.* That the United States should provide, in a new treaty, for an examination and settlement of all the claims of the Choctaws, whether national or individual, under the treaty of 1830, *as specified in their letter to the Commissioner of Indian Affairs, dated April* 5, 1854.

"*Second.* That the Choctaws should adjust their disputes with the Chickasaws; should lease to the United States 'all that portion of their common territory between the 98th and the 100th degree of west longitude, for the permanent settlement of the Wichita and such other bands of Indians as the Government might desire to locate therein'; and should absolutely and forever quit-claim and relinquish to the United States all their right, title, and interest in and to any and all lands west of the 100th degree of west longitude."

The conclusive thing, in this extract from finding 28, is in the finding that the negotiations were *conducted* with reference to the *accomplishment* of the following objects:

"*First.* That the United States should provide, in a new treaty, for an examination and settlement *of all the claims of the Choctaws, whether national or individual, under the treaty of* 1830, AS SPECIFIED IN THEIR LETTER TO THE COMMISSIONER OF INDIAN AFFAIRS, DATED APRIL 5TH, 1854."

Here then we have an express finding of the fact that the negotiations which resulted in the treaty of 1855 "were conducted with reference to the accomplishment of" the settlement "of *all the claims* of the Choctaws, whether *na-*

tional or *individual*," under the treaty of 1855, "*as specified in their letter to the Commissioner of Indian Affairs, dated April 15th*, 1854."

I have shown that that letter of April 5th, 1854, as interpreted by the report of Cooper, the Indian agent, and as expressly set out upon its face, "earnestly contended" for these fourteenth-article claims, and that Cooper allowed therefor $2,266,735.50, after deducting for scrip paid $1,740,000, reservations secured, $300,000, money and other articles paid, $2,178,529.

We thus obtain, from the very letter of the findings of fact, a demonstration that the great claim, far exceeding all others, which was "earnestly contended" for up to the very making of the treaty, and which brought about the treaty of 1855, was these fourteenth-article claims covered by the release.

Again: Another demonstration that these fourteenth-article claims, covered by the release, were within the submission, is found in the fact that the words of the submission plainly embrace it.

The things submitted and to be tried were not only all "claims," but all "*rights* and claims." Wherever this word "rights" is employed in a treaty, it is used in the diplomatic or international sense of that word. Every thing that is vindicated by the principles of natural justice is in the sense of a treaty a "right," unless the sense is restrained by the context.

In the case of Comegys *v.* Vasse (1 Pet., 195, 216, 217) this court came to this precise question. The court there dealt with the question whether a claim against a foreign country, for which no suit could be brought, for the enforcement of which no treaty existed, and where the claim was the mere "*spes recuperandi*," held by an underwriter who had paid a marine loss, was an international "*right*" within the sense of the international law and of treaties. The court, in saying that this mere "hope of recovery"

is within the signification of the word "rights," uses this language, (p. 216):

"Who will doubt that such debts are *rights?* It does not follow because an *unjust sentence is irreversable*" (in the case at bar the unjust sentences under the act of 1842, &c., &c.,) "that the party has lost all *right* to *justice*, or all claim, upon the principles of public law, to remuneration. With reference to municipal law he may be without remedy, but with reference to the principles of international law he has a *right* both to justice of his own and of a foreign sovereign."

When, therefore, this treaty says that the Senate shall consider all the "*rights* and claims" of the Choctaws, it clearly required that this word "rights" shall be used in the sense of submitting to the Senate the question whether, according to the principles of equity and justice, the Choctaws should be bound by the transactions arising under the said legislation of 1837, 1838, 1842, 1845, and 1852?

Again: Another consideration conclusively showing that these fourteenth-article claims, alleged to be released, were within the submission to the Senate, is that any other interpretation reduces articles 11 and 12, taken together, to the absurd. Without here repeating again the wording of these articles bearing upon the point now to be suggested, the point may be stated thus:

The effect of the first question, submitted by article 11 to the Senate, is to require and to compel the Senate to *deduct* from whatever it should allow for the "proceeds of the sale of the lands ceded to the United States by the treaty of 1830," "the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of the said treaty" of 1830.

Now, if you say that the question of allowing for the reservations improperly sold, and which were represented by the scrip, funded and unfunded, to wit, 1,404,640 acres,

was *not* submitted to the Senate, and that these 1,404,640 acres were *not* to be allowed for at all, then you have the result that, whilst they could allow *nothing* for these 1,404,-640 acres, yet the Senate was *expressly required* to deduct from what it did and could allow all payments in scrip, in funding scrip, in surveying and selling these lands, and otherwise. The amounts paid for these very lands by the United States were to be deducted from the award made for *other* things, but nothing allowed for such lands. This reduces the provisions of the treaty not only to palpable injustice, but absolute absurdity.

Again: Article 12 requires the Choctaw Nation to *assume and pay* what the authorities of the tribe should judge to be the just and equitable debts of the United States to individuals of the tribe in the event of the Senate's allowing either net proceeds or a gross sum.

The contention which holds that the submission to the Senate did not suffer the Senate to allow anything for the 1,404,640 acres covered by the release, and by the scrip, funded and unfunded, is one which says not only that the Senate shall first deduct from the proceeds of the lands ceded "the costs of survey, sale, and all just and proper expenditures and payments," but it *also* requires the Choctaw Nation to pay all debts, which in the estimation of the authorities of the tribe, the United States justly and equitably owed to *individuals*, although the Senate was prohibited from allowing anything to the Nation, in the award, for the *very wrongs* of the Government which *created* these debts to the individual members of the Nation!

To illustrate: The Council of the Choctaw Nation found that the debts for these fourteenth-article reservations, covered by the release, amount in value to $3,216,098, without interest. This debt of the United States to individuals the twelfth article requires the Choctaw Nation to assume and pay, and yet the contention which says that the value of

these claims covered by the release was not submitted to the Senate, is one which says that the Choctaw Nation should discharge this debt of $3,216,098 to the United States, for and should not receive a farthing therefor under the award of the Senate.

Once more, and, upon this point, finally:

This treaty was made by the Senate. The very men who made it were the men which sat in judgment upon its interpretation, and this speedily after it was made. The same Senators who made the treaty construed it in making this award. The same officers of the executive who conducted the negotiations which led up to the treaty also gave it construction. Both the Senate and these officers construed it as authorizing the Senate to reconsider and try the validity of the release and of these fourteenth-article claims. To now hold that neither the Senate, nor the officers conducting the negotiation which led to the treaty, understood what they meant by the words they employed in framing the submission, would be a most unusual construction, and one which is forbidden by the plain principle of law, which is that where the words of the instrument being construed do not compel the courts to pronounce the contemporaneous and practical construction erroneous, the courts will follow such contemporaneous construction.

This court has been brought to the question of what force the court will give to such practical and contemporaneous constructions of statutes and treaties, in innumerable instances, and the court has steadily held that such contemporaneous construction is in the highest degree persuasive, and will not be overthrown unless the overthrow is required by the *obvious* meaning of the instrument construed.

United States *v.* Peugh, 99 U. S., 265.

Hahn *v.* United States, 107 U. S., 406, and cases cited.

See also Castro *v.* DeUriarte, 16 Fed. Reporter, 93, (1883).

In The United States *v.* Moore, 95 U. S., 763, the language of the court upon this point is:

"The construction given to a statute by those charged with the duty of executing it, is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons,"—citing the cases.

When you add to the considerations which I have, upon this point, now gone over, the fact that the courts always give to the determination of the arbitrators, as to what comes within the submission, the most liberal interpretation in favor of sustaining the award, and "lean" to presuming that the submission was not exceeded, it seems to me impossible that there should be doubt upon this vital point in the case, and that it would be improper for me, in this court, to further pursue this point as to these fourteenth-article claims being within the submission.

The Senate, therefore, did not exceed the jurisdiction conferred upon it by the submission. The Senate was empowered and required to retry, upon principles "just, fair, and liberal," (to quote the words of the eleventh article making the submission,) these fourteenth-article claims covered by the release, to try and decide upon the binding force of that release and all other questions arising upon the broad question whether the Choctaws ought to be "allowed" these net proceeds. The Senate reached the award which it did reach, and reached it, as finding No. 37 (Record, 89, 90) declares, by a consideration which—

"Was full, fair, and impartial, and its adjudication, as made under the said article, was not influenced or affected by, and was in no way or degree the result of, any fraud, corruption, partiality, and there is no evidence tending to show that it was the result of surprise, or mistake on the part of the Senate, or of any member thereof."

I submit, therefore, that this award must stand, and that it must stand whether, in the absence of the treaty of 1855 and of this award thereunder, the release under the act of

1852 would be binding in a court of equity or not. And here I leave this point in the case with an additional suggestion which has, I submit, most important significance in determining whether this submission meant to leave the Choctaws remediless as to the injustice involved in this legislation.

The suggestion is that, for this covenant for the Senate trial, the Choctaws were required to pay and did pay an additional, a new and a most valuable, consideration in the cession and lease provided for in article 9.

True it is that, by the tenth article, the United States stipulated to pay to the Choctaws, for said cession and lease, six hundred thousand dollars, and that, therefore, it cannot be said that this cession and lease were *wholly* in consideration of the covenants in favor of the Choctaws contained in the eleventh and twelfth articles. Nevertheless it remains thoroughly true that, in contemplation of law and of reason, *every* covenant of a treaty in favor of one party becomes a consideration supporting each of the covenants of the other party.

This position is strongly stated, and is thoroughly vindicated by the authorities presented, in the opinion of Attorney-General Cushing of the 14th of October, 1853, where his words are:

"Now, in the treaties and conventions between nations, the general doctrine is that any special advantage conceded by a party under any one article of the compact is in consideration of all the advantages enjoyed by the same party under that and all other articles of the treaty. Each particular article is *consented* to by each party in consideration of all the other articles, and all the articles, united, form the consideration of *each* particular article." (6 Opins. 151.)

To this, the Attorney-General cites as follows:

Vattel, Book 2, Ch. 13, pp. 214, 215.

Grotius de Jure Belli ac Pacis, lii., cap. 15, s. 15.

Wildman's Institutes, vol. 1, p. 174.

Hence, for this covenant, contained in articles 11 and 12, providing for this new trial of their rights based upon the provisions of the treaties of 1855, and of 1830 as embodied in that of 1855, (and not a trial based upon the provisions of the statutes of 1842 and 1852), the United States received, from the Choctaws, the consideration of the cession of all their lands west of the 100th meridian, the consideration of a lease of all their lands west of the 98th meridian, and the further consideration of allowing other tribes to be settled upon their lands.

May I, in concluding this part of the argument, beg the court, in the light of what I have now gone over, to look at the construction of this submission to the Senate, which I now resist—one which affirms that the Senate was, by such submission, rendered powerless even to *consider* the question as to whether, as against this legislation of 1842 and 1852 and the release thereunder, this nation should receive, from the government, in the new trial, a settlement of their rights and claims upon principles "just, fair, and liberal."

Observe the fact that the covenant of the eleventh article is one stipulating for a consideration of all of their "rights and claims." Remember that the covenant was one which expressly based this new trial, by the Senate, upon the requirements of *treaties*, and not upon the requirements of the very statutes, and the release thereunder, which had inflicted the injuries of which they complained. Consider that the covenant was one which, in express words, provided that the trial should be one which should try the "claims *set up* under the treaty of the 27th of September, 1830." Observe, moreover, that the deprivations —not to say robberies—of which the nation complained, and against which it had so "earnestly contended," and against which they sought redress through the covenants in this eleventh article, were the *very* wrongs which were inflicted by said statutes and said release thereunder. Consider,

further, that if you should estimate that 1,404,640 acres of land, of which they were deprived by these statutes, at that one-half of their true value, which was put upon them by finding of fact No. XXIX, and then should credit the Government with the utmost value, as found by the court below, which the nation realized for these lands in scrip and in its finding, still, even then, there is inflicted upon the Choctaws a loss of $1,441,551.20, and which loss reduced the reservees, so deprived, to penury and vagrancy. Then consider again that, to be delivered from this immense, and, in its consequences, this appaling calamity, this nation has been supplicant at the bar of the Government for a quarter of a century. Then consider, again, that after this quarter of a century had ended, and a generation had passed away, the Government at last consented to heed this outcry. Then observe that, in thus giving this heed to the claim thus "earnestly contended for," during this quarter of a century, the Government covenanted, in article 11, to give to this nation, before a tribunal of its own choice, and composed of its own and its highest representatives, a new trial, based, as I have said, on "treaty stipulations," and not upon the mandates of the very statutes which had inflicted the destruction of the petitioners. Then consider that the covenant was expressly that the Senate's award should be based on a consideration that should be "just, fair, and liberal." Then remember that the said treaty of 1830, in its eighteenth article, added the covenant that all doubts should be resolved in favor of the Choctaws. Then remember, further and moreover, that said twelfth article covenanted that the judgment of the Senate, so reached, should be final. Then add to these considerations that other and momentous one that I have just pointed to, namely, that the Choctaws were required to, and did pay to the United States, for this covenanted new trial by the Senate, a new consideration in the cession and lease of lands of an aggregate value of millions of dollars.

And after you have put all these considerations together—considerations of incalculable and startling magnitude—and have weighed them, then, in their face, consider the contention which is set up against these—the contention that, in this new trial, so long deferred and so dearly bought, not even *jurisdiction* was bestowed on the Senate to consider the question of redressing this supreme wrong; and no power bestowed upon the Senate of restoring to this people any part of the values represented by these lands of which they were robbed. The contention is that, on the contrary, only that mockery was secured by the covenants in article 11 of having *continued against them, and re-enacted and reinforced*, by these treaty provisions, the very statutes and release thereunder, which had occasioned their supreme and immense misfortune.

I think I cannot be wrong in supposing that such a construction, set up in the light of the considerations which I have just enumerated, is a construction which cannot be tolerated in a court of equity. I think that the constructions of articles 11 and 12, upon which this contention rests, is little less than mere violence against the repeated, the express, and the unambiguous requirements of the submission to the Senate, and that it results in wrong which is simply shocking to every instinct of justice.

You have seen that the two supremely important questions presented by this case, and especially as bearing upon the effect of the covenants contained in article 11 of the treaty of 1855, are:

First. Is the release of 1852 binding in a court of equity upon the general principles of the law and under the conditions of its execution, and *independently* of the treaty of 1855?

Second. What is the effect of the covenant in said article 11, stipulating for a trial of the validity of this release, and of all other questions affecting the "rights and claims" of the Choctaws, upon the continuing force of the release?

The importance of these two questions is so great, by reason, not only of the magnitude of the interests involved, but also of the legal principles involved, that I venture to restate the considerations, which answer these questions, in words and views somewhat different from those in which I have just enumerated them. I recapitulate them as follows:

1. The court is shown this alleged releasor, the appellant, as a person, when in its most prosperous and powerful conditions, which is made, by the Constitution and by our laws, to be a mere subject and "dependent" band—a band which, as against the power of the United States, is a mere atom, a mere "babe in the woods," cared for by the United States. (See 5 Pet., 17; 17 Howard, 372; 18 Wall., 116.)

2. The court sees such "dependent" band to be entitled, through the articles of the treaty of 1830, to absolute protection in all its rights of property, equally with citizens, and to be entitled, *specifically*, to protection against the very land spoliations which make the basis of these fourteenth-article claims.

3. Then the court further sees this dependent band, not only *not* so protected by the Government, but despoiled of the very lands so covenanted to be protected, and despoiled by the act of its covenanted protector, the releasee, their ruin being accomplished through sales of their reservations—the very ones making these fourteenth-article claims.

4. Then the court sees this releasee confessing these land spoliations in the third section of the act of 1842, where it says that the sales of the reservations have "rendered it impossible to give to" the releasor the lands to which the reservees were "entitled," in virtue of treaty-covenants. (5 Stats., 516.)

5. Then again, the court sees this spoliation of this "*de-*

pendent" (5 Pet., 17) band prosecuted and persisted in, by the Government and its citizens, until it is reduced to the condition which is described in finding 16 (Record, 72) as "A HELPLESS CONDITION OF WANT."

6. Then the court sees these people, so reduced to the said "helpless condition of want," to be described, in said finding 16, as in a position where it was "practically *impossible* for them to contend with the United States in their *requirement* that the Choctaw heads of families *should* accept and receive the scrip provided to be issued to them in lieu of the reservations, by the act of 1842." (Record, 72.)

7. Then this court further sees this band to be in a condition of "helpless want" so extreme that finding 16 (Record, 72) says of it that—"said *scrip* and *money* paid to redeem the same WERE TAKEN AND ACCEPTED BECAUSE THEY WERE POWERLESS TO ENFORCE ANY DEMANDS AGAINST, OR IMPOSE ANY CONDITIONS UPON, THE UNITED STATES."

8. This court, moreover, sees that these demands that this scrip and money "*should* be received," and said release executed, and said homes surrendered, came to this people, so in this helpless condition of want, in the shape of mandatory and inflexible law, and did not come in the form of *overture* which tendered to them some right to make choice of something better than the ruin involved in such law. And to this people, so commanded, *no* court was opened for resistance or redress!

9. Then the court is further shown, through the findings of fact, that, for lands worth, upon the average, anywhere from $1.85 per acre to $5 per acre, this release compelled them to accept what, as to one-half, realized to them not in excess of 21 cents per acre, and as to the other half, $1.25 per acre.

10. Then, again, the court is shown, by the facts found, this releasor to be required, by the Government, the releasee, to pay, through a cession of its lands, a new and enormous consideration for a new covenant contained in

article 11, stipulating that the question of the *binding force* of this release, so procured, as well as the other "rights and claims" of this people, should be *tried by the Senate* of the United States upon "principles just, fair, and liberal."

11. Then, again, the court is shown, by the facts found, this people to be the awardee of the Senate, such award finding them entitled to relief against the said release, and to be paid the claims alleged to be covered by it.

It is in the light of such considerations as these now again, by me, enumerated, that I ask this court to answer the ultimate and the momentous question raised by the great case at your bar—Is *such* a release so obtained from *such* a releasor, under *such* conditions, now and yet to be enforced against, and in defeat of, that justice, which is so explicitly covenanted for in that provision of the eleventh article, which says that the Senate shall base its award upon considerations, towards the Choctaws, "just, fair, and liberal?"

I, therefore, again return to, and further proceed with, an enumeration of the utterances of this court, and other authorities, establishing that such a release never had any force, in any court of equity, and, much more, can have none against the covenant in the eleventh article for the trial and award of the Senate, and which covenant has now become an *executed* one through the award made thereon.

Although I have presented the authorities from this court showing that this alleged accord and satisfaction, and this release, are not good, either at common law, or upon principles of equity, even when viewed *independently* of the treaty of 1855, yet I am brought back to the force of this alleged release, to be viewed, now, under the *additional* operation and force of the covenants in said articles 11 and 12, stipulating for a final and conclusive award by the Senate.

I am, therefore, now to ask whether, as against the cov-

enants for *that* trial and final award, as well as against the *general* principles of law and equity, this alleged release can yet stand up and do its fatal work.

The case of Russell *v.* Southard (12 How., 131) is one where Judge Curtis delivered the unanimous opinion of this court, and where the instrument, attempting to cut off the equity of redemption, of the mortgagor, in the lands in question, and agreeing to release dower, was under seal, was drawn with the utmost skill and solicitude to accomplish the release; and, in regard to which instrument, this court says:

"It was clearly intended to manifest a conditional sale. Very uncommon pains are taken to do this."

Notwitstanding this fact the court set aside the release and gave as a controlling reason therefor, what is expressed in these words:

"It is true Russell *must* have given his *assent* to this form of the memorandum; but *distress for money*, under which he then was, places him in the same condition as other borrowers in *numerous* cases reported in the books, who have submitted to the dictation of the lender under the *pressure of their wants;* and a court of equity does not consider a consent *thus* obtained to be sufficient to fix the rights of the parties. '*Necessitous men*,' says the Lord Chancellor in Vernon *v.* Bethell (2 Eden, 113) '*are not, truly speaking, free men*, but to answer a present emergency will submit to any terms that the crafty may impose upon them.'"

This decision is followed and approved, by this court, in very many cases.

A striking example of this kind is found in Villa *v.* Roderigues, (12 Wall., 339, 340,) where the court, speaking of the condition of the releasors in that case, says:

"The condition of the widow and orphan might well have touched his (the releasee's) kindred heart with sympathy. It seems only to have whetted his avarice."

Speaking of the jealousy and disfavor with which releases, from such persons in such conditions of *distress*, are regarded in courts of equity, the court says:

"He" (the releasee) "must hold out no delusive hopes; he must exercise no *undue influence;* he must take no advantage of the affairs or of the *poverty* of the other party. * * * Where confidential relations and *means* of oppression exist, the scrutiny is *severer* than in cases of a different character. The *form of the instrument employed is immaterial.* * * * Public policy, sound morals, and the protection due to those whose property is thus violated require that such should be the law."—(citing, amongst others, this case of Russell *v.* Southard.)

Speaking of the same matter of a release of the equity of redemption by a necessitous debtor, the court, in Pugh *v.* Davis, 96 U. S., 337, says:

"A subsequent release of the equity of redemption may undoubtedly be made to the mortgagee. * * * The transaction will, however, be closely scrutinized, so as to prevent *any oppression* of the debtor."

Speaking of this doctrine the court there further says:

"Its maintenance is deemed essential to the protection of the debtor who, *under present necessities*, will often submit to ruinous conditions, expecting or hoping to be able to repay," &c.

To this Russell *v.* Southard, amongst others, is cited and approved.

In Allore *v.* Jewell, 94 U. S., 506, 512, this court again asserts the same principle, in protection of a party in necessitous and dependent conditions and of feeble understanding, and there set aside a conveyance and decreed restoration of property. The court there says:

"The principle upon which the court acts in such cases, of protecting the weak and dependent, may always be invoked on behalf of persons in the situation of the deceased spinster in this case."

In the case of Graffam *v.* Burgiss, 117 U. S., 180, 185, *et seq.*, the same principle of equity is again by this court strikingly applied and powerfully enforced in the light of ample citation of authority. There the sale, which was set aside, was a *judicial* one. The evidence showed great inadequacy of consideration paid at the judicial sale, along with a condition of helplessness in the party whose property was sacrificed. The facts in that case were, it is true, striking, and showed severe oppression. But they are infinitely less revolting to the conscience of the chancellor than those which I have just enumerated in the present case.

There again this court repeats the same principles of morality and of equity which I have derived from the cases just cited. On page 185 this court, through Justice Bradley, says:

"It is a principle of *law*, as well as of *natural justice*, that *greater consideration and care are due to persons known to be unable to take care of themselves* than to those who are fully able to do so. It is insisted that the proceedings were all *conducted according to the forms of law*. Very likely. Some of the most atrocious frauds are committed in that way. Indeed, the greater the fraud intended the more particular the parties to it often are to proceed according to the strictest *forms of law*."

On page 192 the court says:

"From the cases here cited we may draw the general conclusion that, if the *inadequacy of price* is so gross as to shock the conscience, (21 cents per acre for lands worth five dollars,) or, if in addition to gross inadequacy the purchaser has been guilty of *any* unfairness or has taken any undue advantage, or if the owner of the property or party interested in it has been, for any other reason, misled or surprised, then the sale will be regarded as fraudulent and void, or the party injured will be permitted to redeem the property sold. Great inadequacy requires

only *slight circumstances of unfairness* in the conduct of the party benefited by the sale to raise the presumption of fraud."

Then on page 193 the court continues, (here quoting from Kloepping *v.* Stellmacher, 6 C. E. Green, 21 N. J. Eq., 328:)

"The sale in this case is a great oppression on the complainants. They are *ignorant, stupid, perverse and poor.*"

That class of adjudications which defines the rules under which courts of equity review transactions between trustees and their beneficiaries is, in legal principle, a class in no respect different from those relating to dealings between persons holding mastery over others and their subordinates. Both classes are alike dealt with by the courts upon the controlling and underlying principle of "inequality of footing," of superiority in intelligence, in means of knowledge, in power, in opportunity for getting advantage, and the like, on the one hand, and inferiority in these respects on the other.

Hence adjudications relating to the rigor with which all dealings between every form of trusteeship, on the one side, and of beneficiaries on the other, are cases just as apposite, in their application to the case at bar, as those are which I have gone over.

I may, therefore, with the strictest propriety, here appeal to the rules of law which courts of equity apply to releases, and like transactions, between beneficiaries and their trustees. This I may do, although this court may not be disposed to hold this tribe, in the transactions in question, to stand in the relation of technical wardship towards the Government.

I do not concede, however, that, for the purposes of this trial, this strictly fiduciary relation, as between the reservees and the Government, does not apply to the reservations in question. Remember that in this trial, as we have already

seen, the liability of the Government, under the facts found, is precisely the *same* liability which the *same* facts would raise, in equity, as between contending citizens. This being kept in mind, it seems to me that it is plain, to a demonstration, that the Government *did* stand, and does *now* stand, as to these fourteenth-article reservations, and in this trial regarding them, in a technically-fiduciary relation, and this *independently of the general relations of all such tribes to the Government.* This technical relation of guardianship, as to these reservations, is established by facts like these:

1. The Government assumed, as to these reservations, absolute mastery of and control over them by taking possession thereof and selling them in virtue of its *assumed* sovereign power over the public lands.

2. Before it assumed this mastery it made, with the Choctaws, in articles five and eight of the treaty of 1830, general covenants, based upon ample pecuniary considerations actually paid, stipulating for full and absolute protection of every member of the tribe in person and in property.

3. In article twelve it *specifically* covenanted that all the property, of every individual, should be protected to the Choctaws, by the Government, and never taken except upon just compensation made.

4. With these covenants in full force it proceeded to appropriate the very lands covered by these covenants.

If these transactions would not, as to the proceeds of these reservations now held by the Government, and as between man and man, constitute the relation of trustee and *cestui que trust*, then that relation is one unknown to the law.

Now add to these facts, just enumerated, what I have cited from the decisions of this court regarding the relations of wardship of *all* Indian tribes, and a demonstration is attained that, as to the transactions affecting these reservations, the Government was, and is, indeed, in the posi-

tion of trustee touching its liability for and concerning such reservations.

I have said to the court that, by the Constitution and the law, this tribe was, during these years, in a relation of wardship to the Government. I have quoted the words of Chief Justice Marshall to this point, where he says:

"They" (the tribes) "may, more correctly, perhaps, be denominated domestic, *dependent* nations. They are in a state of *pupilage*. Their relation to the United States resembles that of a *ward* to his guardian."

The rule which requires that every transaction in the nature of a release or a conveyance, as between a trustee and a beneficiary, shall be viewed with rigor and construed with severity as in favor of the beneficiary, is so familiar and so fixed in our law as to make it improper here to resort to a collection of authorities.

The rule is stated in its mildest and most conservative form, as in favor of supporting such transactions between parties standing in fiduciary relations, in the case of Twin Lick Oil Company *v.* Marbury, 91 U. S., 588, where the court, speaking in regard to all such transactions with trustees of every description, states the rule in these words:

"His dealings with the subject-matter of his agency or trust, and with the beneficiary or party whose interest is confided to his care, is viewed with jealousy by the court and may be set aside on *slight* grounds." This "is a doctrine founded on the soundest morality, and which has received the clearest recognition in this court and in others."

I have already shown, by the accumulated and uniform decisions of this court, that whenever the Government consents to become a litigant, in the courts, touching any questions of property rights, it thereby subjects itself, in the trial, to the application of every rule and principle of law and equity which would be applied as between citizens

litigating the same subject-matter. Keeping this principle in view, and treating and regarding the transactions which I have enumerated, as leading up to and constituting the said release here relied on as a defense, as the acts of a litigant citizen, I say of them that it seems to me that it is little less than an affront to a court of equity to urge arguments to show that such transactions, so relied upon as making out a release in favor of the trustee and the author of these wrongs, are or could ever be in equity a good release in favor of a citizen who had so dealt with the Choctaws. And no more can they be in favor of the Government.

I now deliberately, and with the design of carefully measuring my words, and to indulge in no language unbecoming the subject-matter, the occasion, and the tribunal which I am addressing, say, of these transactions relied upon here as a release, that they are transactions which in their hardship and enormity are little short of a disgrace to civilization itself, and are amongst the worst chapters which darken the history of our dealings with Indian tribes. They surely can never be sanctioned in a court of equity as making out, against the injured people, a valid accord and satisfaction.

It would be unjust to the Government to here contend that these spoliations, which reduced nearly an entire nation to the condition of vagrancy and "helpless want," described in finding 16, and which drove them, helpless and impoverished, from the homes which were covenanted to them by article XIV, and which refused to them even the pittance accorded to them by said laws, were, in their inception, wholly or mainly the deliberate action of Government, as distinguished from the acts of lawless citizens. The truth is that the Government, *as such*, was dragooned into the position of making sales of these reservations through the rapacity of lawless whites, who seized these lands, and who united with the people of Mississippi in

demanding the *total* expulsion of the tribe, regardless of treaty obligations. The crime of the Government itself was rather in *bowing* to these lawless and cruel demands, in selling their lands, in enforcing the expulsion, and in making no just compensation therefor. It was for the *very* reason that the Government felt that it had unjustly yielded to these wrongs that it, at last, and at the end of a quarter of a century, undertook to redress them, and *all* of them, through the Senate trial, stipulated for in articles XI and XII of the treaty of 1855. And now the defense set up, which bases itself upon the release of 1852, is a cruel attempt to *reinflict*, and to perpetuate, the criminal spoliations which the treaty of 1855 was made on purpose to redress!

This brief has been prepared as an attempt to present to the court the leading considerations which appear to the counsel charged with the duty of closing the oral argument to be those which will control the decision of the court in regard to the fourteenth-article claims. It is not designed to cover the entire field, which is covered by the main brief in the case. It is put in print mainly as a matter of convenience to counsel, but is also filed as an ancillary brief in the case, and as such is submitted under the rules of the court.

SAM'L SHELLABARGER,
Of Counsel.

OCT 3 1888
JAMES H. KENNEY

IN THE

Supreme Court of the United States,

OCTOBER TERM 1886.

No. 848.

THE CHOCTAW NATION, Appellant,

vs.

THE UNITED STATES.

No. 850.

THE UNITED STATES, Appellant,

vs.

THE CHOCTAW NATION.

Appeals from the Court of Claims.

BRIEF FOR THE CHOCTAW NATION.

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Appeals from the Court of Claims.

Brief for Appellant.

I.

STATEMENT OF THE CASE.

This is an appeal from a judgment rendered by the Court of Claims in favor of the appellant on the 1st day of March, 1886. Jurisdiction of the cause was conferred upon that court by the provisions of an act of Congress approved March 3, 1881, which is as follows:

AN ACT FOR THE ASCERTAINMENT OF THE AMOUNT DUE THE CHOCTAW NATION.

Whereas the Choctaw Nation, for itself and in behalf of individual members thereof, makes claim against the United States on account of various treaty provisions

which it is alleged have not been complied with: Therefore—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon. Power is hereby granted the said court to review the entire question of differences *de novo,* and it shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of eighteen hundred and fifty-five; and the Attorney-General is hereby directed to appear in behalf of the Government; and if said court shall decide against the United States, the Attorney-General shall, within thirty days from the rendition of judgment, appeal the cause to the Supreme Court of the United States; and from any judgment that may be rendered, the said Choctaw Nation may also appeal to said Supreme Court: *Provided,* The appeal of said Choctaw Nation shall be taken within sixty days after the rendition of said judgment, and the said courts shall give such cause precedence.

SEC. 2. Said action shall be commenced by a petition stating the facts on which said Nation claims to recover, and the amount of its claim; and said petition may be verified by either of the authorized delegates of said Nation as to the existence of such facts, and no other statements need be contained in said petition or verification.

21 Stats. at Large, 504.

THE QUESTIONS PRESENTED BY THE APPELLANT'S PETITION.

The petition upon which the case was heard in the Court of Claims is contained in the Record from pages 1 to 30, inclusive. It was filed on the 26th of February, 1884, as a substitute for the original and amended petitions filed by the appellant on the 13th of June, 1881, January 24th, 1882, and January 26th, 1884.

The questions which that petition presents for consideration, and the manner in which they arise, are as follows:

Claims which Existed in Favor of the Appellant Previous to the Date of the Treaty of June 22d, 1855, and which Became Subjects of Consideration if the Award and Judgment of the Senate in Favor of the Appellant, Under the Authority of Article XI of the Treaty of 1855, is Set Aside by the Court.

A. *Claims under Article XIV of the Treaty of* 1830.

That there was due to the appellant for and on account of the non-performance by the United States of the stipulations of article XIV of the treaty of September 27th, 1830, the sum of eight million two hundred and nineteen thousand seven hundred and eighty dollars ($8,219,780). The specific claim asserted for the non-performance of the stipulations of that article of that treaty was as follows:

That article made reservations for the benefit of each Choctaw head of a family who should desire to remain in the States and become a citizen thereof. And in order to secure such reservations, it was required in said article that said head of a family should comply with or perform the following condition, to wit:

That he shall signify "his intention to remain" to the agent of the United States for the tribe "within six months from the date of the ratification of the treaty." Upon making such signification of an intention to remain, such head of a family and his children became entitled to reservations, as follows: To each head of a family, six hundred and forty acres, to be bounded by sectional lines of survey; to each *unmarried* child which is living with said head of a family over ten years of age, three hundred and twenty acres; to each of such children as might be under ten years of age, one hundred and sixty acres, to adjoin the location of the parent. If said head of a family and his children continued to reside on such reservations for five years, intend-

ing to become citizens, the United States agreed to issue a grant in *fee-simple* for said reservations. There were fourteen hundred and forty-two of said Choctaw heads of families and their children who complied or offered to comply with all the conditions upon which a grant in *fee-simple* to the said reservations was made to depend, but said reservations were never allowed or granted to them by the United States. The said specified number of Choctaw heads of families and their children were entitled to 1,672,760 acres of land. The reasonable value of said reservations at the time the said Choctaw heads of families and their children became entitled to receive grants for the same in *fee-simple* was *five dollars and fifty cents per acre*, or an aggregate of $9,200,180. That subsequent to the expiration of the said five years, when the said Choctaw heads of families and their children became entitled to grants in *fee-simple*, the United States paid to the said Choctaw heads of families and their children, because it was impossible for it to grant the said reservations in *fee-simple*, as required by the treaty, in money and land scrip, the equivalent of nine hundred and eighty thousand four hundred dollars ($980,400). The amount claimed for the nonperformance of the stipulations of that article of the treaty was therefore $8,219,780.

Record, pp. 5, 6, 7, 8; paragraphs 8, 9, 10, 11.

To the claims and demands asserted on behalf of the appellant under the said article, the United States, on the 14th of April, 1884, filed a special plea, in the words following, to wit:

DEFENDANT'S SPECIAL PLEA TO CLAIMS ARISING UNDER ARTICLE XIV OF THE TREATY OF 1830.

Now comes the Attorney-General, by leave of the court, and for a further plea in the above-entitled cause avers the following matter of special defense to certain of the

matters alleged in the petition therein, as hereinafter set forth, to wit:

That by the fourteenth article of the treaty of September 27, 1830, recited in the eighth article of the petition, each Choctaw head of a family being desirous to remain in the existing location, in the State of Mississippi, of such person at that date, and to become a citizen of the States, was to be permitted to do so by signifying his intention to the agent of the United States in said Nation within six months from the ratification of the treaty, and was thereupon to be entitled to a reservation of land as therein prescribed, including his improvement or some portion of it; and if he should reside upon said land, intending to become a citizen of the States, for five years after the ratification of the treaty, a grant in *fee-simple* of the land so reserved should issue to him.

The said treaty was ratified on February 24, 1831, by the President and Senate of the United States.

Within six months from the said last-mentioned date about one hundred Choctaw heads of families signified to William Ward, who was, during that period, the agent of the United States in said Nation, their intention to remain and become citizens of the States, in order to take the benefits permitted by the said fourteenth article of the treaty, and their names were entered by said agent on a register which he made of such applicants.

A considerable number of individuals of the Nation removed from the ceded lands to the lands granted to the Nation in the present Indian Territory in the years 1831, 1832, and 1833, but many remained.

On August 12, 1833, the ceded lands were directed by Executive proclamation to be sold on the third Monday of October following, and an agent was appointed to locate, before the sale, the reservations to be made under the treaty of the said heads of families who had signified their intention to the agent (Ward), as shown by his register. A considerable number of Choctaws not entered on the register of said Ward applied to the said locating agent for locations under the said fourteenth article, and their claims were referred to the President, who decided in May, 1834, that they could not be recognized; but as it was represented to him that the claimants had signified their intention to the agent (Ward) in due time, and that the agent

had neglected and refused to enter their names on his register, he directed the locating agent to receive evidence of the facts alleged (which he, in February, 1835, transmitted to Congress) and to make provisional locations for such claimants, and directed also that the sale of the lands so located for such claimants should be suspended to await the action of Congress.

On March 3, 1837, Congress passed the act entitled "An act for the appointment of commissioners to adjust the claims to reservations of land under the fourteenth article of the treaty of eighteen hundred and thirty with the Choctaw Indians," chapter 39, which was amended by act of February 22, 1838, chapter 13.

Commissioners were appointed under the former act, who proceeded to consider the claims presented under said act, but who had not concluded the task assigned by it before August 1, 1838, when their powers expired by limitation.

The matter continued to receive the consideration of Congress, and on August 23, 1842, an act was passed entitled "An act to provide for the satisfaction of claims arising under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit Creek, concluded in September, one thousand eight hundred and thirty," chapter 187, which was amended by the provisos to the first section of the act approved March 3, 1845, chapter 72.

Commissioners were appointed under this act of 1842, who also proceeded to consider the various claims presented under the said act, but who did not complete the duties prescribed to be done by them within the time limited by the act. Their authority was therefore extended for one year from June 17, 1844, by act of that date, chapter 105 (5 Stat., 691), and within the time so limited, to wit, on June 16, 1845, they rendered their final report to the President, as required by the said act of 1842.

Certain claims under the said fourteenth article of the said treaty which had been brought before the last-mentioned board of commissioners, but which had not been decided by it, were referred by Congress, by joint resolution No. 17, approved August 3, 1846 (9 Stat., 114), to the Secretary of War, with authority to decide the same as therein provided, which authority was exercised in accordance with said provisions.

Certain other claims under the said article of said treaty which had been brought before the said several boards of commissioners and rejected by them, or recommended by them and rejected by other competent authority, or in which the scrip awarded by the last-mentioned board had not been issued, were referred by Congress by the acts approved August 30, 1852, chapter 103, and March 3, 1853, chapter 104 (10 Stat., 42, 227), to the Secretary of the Interior, with authority to examine and act upon the same as therein provided, which authority was duly exercised in accordance with said provisions.

Under the said treaty, the statutes and proceedings thereunder above recited, one hundred and forty-three heads of Choctaw heads of families obtained reservations of land in the ceded territory, and after June 16, 1845, it was found by the commissioners and other authorities in said statutes provided, professing to act thereunder, that one thousand one hundred and fifty-five other Choctaw heads of families were entitled to the benefit of the fourteenth article of the treaty (all other claims in that behalf being rejected by them), and also that the United States had disposed of the tracts of land to which such Indians would be entitled under the provisions of said fourteenth article; so that it was at the time of such finding impossible to give said Indians the quantity to which they would be severally entitled, including their improvements, as prescribed in the said act of August 23, 1842, or any part thereof, or to their children, on the adjoining lands; and the said commissioners and authorities did thereupon estimate the quantity of land to which each of said Indians would be so entitled, and did allow him or her for the same quantity of land equal to that allowed to be taken out of any public lands in the States of Mississippi, Louisiana, Alabama, and Arkansas, subject to entry at private sale.

Eleven hundred and fifty-five pieces of scrip, each representing one-half of the last-mentioned allowance of land to the said several Choctaw heads of families, were issued by the proper authority, in pursuance of the said statutes, to the persons so found to be entitled thereto, and were received and accepted by them in part payment for the lands aforesaid.

The remaining eleven hundred and fifty-five half pieces of scrip were reserved as directed by the said act of March

3, 1845, and interest was paid on the value thereof, estimated at $1.25 per acre, to such of the Choctaw heads of families as were found to be entitled thereto, until the payment thereof was discontinued, and the principal, amounting at said valuation to $872,000, was paid to the parties entitled (after the execution by the claimant of a final release of all claims of such parties under the fourteenth article of the treaty), as required by the first section of the act approved July 21, 1852, chapter 66.

The said release was duly executed by the proper national authority of the Choctaws, and is as follows:

"Whereas, by an act of Congress entitled 'An act to supply deficiencies in the appropriations for the service of the fiscal year ending the thirtieth day of June, one thousand eight hundred and fifty-two,' all payments of interest on the amounts awarded Choctaw claimants under the fourteenth article of the treaty of Dancing Rabbit Creek, for lands on which they resided, but which it is impossible to give them, shall cease, and that the Secretary of the Interior be directed to pay said claimants the amount of principal awarded in each case respectively, and that the amount necessary for this purpose be appropriated, not exceeding eight hundred and seventy-two thousand dollars, and that the final payment and satisfaction of said award shall be first ratified and approved as a final release of all claims of such parties under the fourteenth article of said treaty, by the proper national authority of the Choctaws, in such form as shall be prescribed by the Secretary of the Interior: Now, be it known that the said general council of the Choctaw Nation do hereby ratify and approve the final payment and satisfaction of said awards, agreeably to the provisions of the act aforesaid, as a final release of all claims of such parties, under the fourteenth article of said treaty.

"A. NAIL, *Speaker.*

"Nov. 6, 1852.

"Passed in the Senate.

"D. MCCOY, *Pres't.*

"Approved.

"GEORGE W. HARKINS.
"GEORGE FOLSOM."

It was delivered to defendants (before payment of the money appropriated by said act to the parties entitled to said scrip) to obtain such payment, and is now among the records of the defendants.

And the Attorney-General further avers that by reason of the premises the claims of the said 1,155 Choctaw heads of families, made as aforesaid for lands to be reserved to them under the provisions of the said fourteenth article of the treaty of 1830, were fully satisfied and discharged, and that any further claim by or on behalf of said 1,155 persons, or of any other persons claiming as Choctaw heads of families in that behalf, was forever barred; and he therefore prays the court that so much of the amended petition as sets forth a cause or causes of action in behalf of the said 1,155, or of any other, Choctaw heads of families for the value of lands alleged to be due them under and by virtue of the stipulations of the said fourteenth article of the said treaty of September 27, 1830 (referring particularly to articles 6 to 11, both inclusive, and schedule "C" of article 31 of the said petition), be dismissed.

THOMAS SIMONS,
Assistant Attorney-General.

Record, pp. 38, 39, 40, 41.

REPLICATION TO DEFENDANT'S SPECIAL PLEA.

The appellant in its replication to said special plea averred:

That before and subsequent to the date of the said act of Congress of July 21st, 1852, as well as before and subsequent to the date of the said alleged release in the said special plea set forth, the appellant and the said heads of families, and individual Choctaws named in the said special plea, claimed, and here claim and aver as against the defendant, that the defendant, and its officers and agents, had continuously and unjustly violated the rights of the said appellant and heads of families, and individual Choctaws, as such rights were secured by said treaty, named in the said special plea, to wit, the treaty of the 27th of September, 1830; and, particularly, had violated

the provisions of the fourteenth article of said treaty; and asserted that such wrongs were so great, continuous, and oppressive that the said claimant, heads of families, and individuals of the said Nation were coerced and compelled to submit to the orders, requirements, and demands of the defendant, and of its officers and agents, in doing the acts which are in the said special plea set forth as acts done by the appellant, heads of families, and individuals, in so far as such acts, in fact, ever were by them done or submitted to; and they then and there, as against the defendant, asserted that such acts were not the voluntary acts of said appellant, or of said heads of families, or of said individuals; and they further asserted, as against the defendant and to the defendant, that the acceptance of the said scrip, and all of said payments thereof, and the giving of said alleged release, which are in said special plea set forth, were, by reason of the said wrongs, coercion, and oppression, not binding on the appellant, or on said heads of families, or individuals of said Nation.

That the said appellant and said heads of families and individuals of said Nation further asserted and claimed, then and there, that it would be and was unjust, unfair, and oppressive on the part of the defendant, owing to the said wrongs, to set up said acts, set forth in the said special plea, as constituting a bar to the claims alleged in such special plea to be barred by said acts.

That among the acts of injustice, violation of treaty, and oppression which the appellant then and there, and up to the 22d of June, 1855, asserted and continued to assert to and as against the defendants, its officers and agents, and which rendered the said acts, in the said special plea set up as a bar, not voluntary and not binding upon the defendant, were the following:

That by the true construction of the said treaty of the 27th of September, 1830, they of right were entitled to the net proceeds of the sales of the lands ceded by them to the United States under the said treaty, as well as the right to have the reservations provided for in and by said fourteenth article of said treaty, and that of these they had been wrongfully deprived.

That the provisions of the acts of Congress in the said special plea mentioned were unjust and in violation of treaty obligations, and ought not to be held to be binding

upon the claimant, or upon the individuals of the said Nation, among others, for the following reasons:

The said acts were passed by the Congress of the United States without their representation in Congress, and without any agency, solicitation, or procurement moving from the appellant or any individual of the said Nation, and solely upon the motion of the defendant, one of the parties to the said treaty of September 27th, 1830.

That the act of the 3d of March, 1837, named in said special plea, in its first section (5 U. S. Stats. at Large, p. 180), and said act, in the special plea mentioned, of the 23d of August, 1842, in section 8 (5 U. S. Stats. at Large, p. 514), in directing the commissions therein provided for, as to what families should be allowed reservations under said fourteenth article, required that the head of the family to which such reservations should be awarded should not be a white man; whereas, by the true interpretation of the said fourteenth article, every person who was the head of a Choctaw family and a member of the said Nation by the laws and customs thereof became entitled to such reservation.

That said acts of Congress were unjust, and violated their treaty rights, in that, by the seventh section of the act of the 22d of February, 1838 (5 Stats., 211), in said plea mentioned, and by the third section of the act of the 23d of August, 1842 (5 Stats., 514), in said plea mentioned, it is, in substance, provided that no Choctaw should be entitled to reservations under the said fourteenth article who had removed to the Choctaw country west of the Mississippi River; whereas, by the terms of the said fourteenth article, such persons so deprived were entitled to patents for their said reservations in *fee-simple* at the end of five years from the ratification of the said treaty, and thereafter were entitled to the said patents absolutely, without regard to the place of their residence.

That the said act of the 23d of August, 1842, violated said fourteenth article in this: That the third section of said act prohibited the commissioners, provided for in said act, from allowing any reservation to any Indian who did not, at the date of the making of the treaty, on the 27th of September, 1830, own an improvement in the Choctaw country; whereas the said fourteenth article imposed no such limitation or condition, but, on the contrary, its effect

is and was to allow to each Choctaw head of a family desirous to remain and become a citizen to do so, whether he owned an improvement or not, but entitled them, in case they had an improvement, to have such improvement, or a portion of it, included in the reservation; and this was so declared in the opinion of the Attorney-General of the United States dated the 30th of January, 1839.

That the third clause of said third section of the act of the 23d of August, 1842, violated the said treaty, by excluding from the benefits of the said fourteenth article all Choctaw heads of families who are entitled thereto by the terms of said article, provided they failed to make it appear to the commissioners that they had not received any other grant of land under the provisions of any other article of the treaty; whereas the said fourteenth article contained no such limitation or condition, and such condition was a flagrant violation of the terms of the fourteenth article.

That the provisions of the said third section of the said act of 1842, which deprived the said Choctaws of the reservations under the said fourteenth article, and compelled them to take script in lieu thereof, because of the fact that the Government of the United States should be found to have sold lands of such Choctaw heads of families, including their improvement, violated said treaty.

That said statutes in said special plea set forth were, in other respects than those above stated, unjust and violative of the property and treaty rights of the said claimant and of the said Choctaw heads of families, and of the individuals of the said Nation.

That before, at, and after the date of the said act of the 23d of August, 1842, and up to the said 22d of June, 1855, the claimant and the individuals of the said Nation continued to assert, as against the defendant, its officers and agents, other wrongs and grievances, among which were the following:

By the fourteenth article of the said treaty of 1830, the Choctaw heads of families were entitled to a period of six months within which to signify their intention to remain, claim reservations, and become citizens of the State; but by the neglect and default of the defendant no officer or agent was appointed to whom such intention could be signified, or opportunity of making such election furnished, until more than one-half of the said six months had expired.

That, when the agent was appointed for receiving said election, the defendant entrusted the duty of receiving and recording the evidence of the signification of such intention to remain to one William Ward, who was, at and during the time of the ostensible discharge of his said duty, habitually drunk; and the said agent was for that reason wholly incompetent to discharge that duty, and was, in the pretended discharge of his said duties, grossly and outrageously abusive, violent, and tyrannical towards the said persons entitled to make said election before him, and who offered to make said election; and this to such an extent that only 69 Choctaw heads of families were, by him, registered as having signified said election; whereas, there was more than 1,500 Choctaw heads of families so entitled to elect, and who desired, and attempted to signify to him, such election, and who were prevented from doing so by his wrongs aforesaid.

That the defendant did not reserve from public sales the lands upon which said Choctaw heads of families resided at the date of said treaty, but, on the contrary, sold the same before the expiration of the five years during which the said Choctaw heads of families were, by the said fourteenth article of said treaty, required to occupy the same.

That the defendant did not secure to the said Choctaw heads of families their right to be protected in their possession of the lands, which they desired and were entitled to have secured to them under the provisions of the said fourteenth article, but, on the contrary, permitted a very large proportion of all of the said heads of families, who were entitled to remain under the said article, to be driven off and excluded from their reservation by white settlers who had been permitted to settle in the Choctaw country before the five years expired from the date of the ratification of the said treaty.

That the defendant disposed of, in violation of the stipulations of the fourteenth article of the said treaty, the reservations of 1,155 of the said Choctaw heads of families.

That the defendant permitted its emigrating agents to use threats, force, and violence, in order to coerce the removal of the said Choctaw heads of families and others who desired, and were entitled, under the said treaty, to remain in their country in Mississippi, and compel them to so remove.

That the defendant continued the use of these means, and of other means equally in violation of their treaty rights, to compel the removal of said heads of families and individuals of the Nation to the country west of the Mississippi River from about the year 1831 until the 28th of September, 1853.

That the defendant passed stringent and restrictive laws in regard to the reservations of the said Choctaw heads of families, which were in violation of, and in conflict with, the stipulations of the said fourteenth article of the said treaty, and by such laws required the said heads of families to show qualifications, in order to be entitled to the said reservations, which were grossly in violation of the said fourteenth article, some of which violations of treaty right, as contained in said statutes, are above set forth.

That the defendant, through its officers and agents, in executing the said laws above named, and the said provisions thereof above named, which are in violation of said treaty, did oppressively and unjustly exclude a large number of the said heads of families from the lands to which they were entitled under said fourteenth article.

That the defendant failed to allow 1,413 Choctaw heads of families any compensation for their improvements which they lost in consequence of being required by the United States to remove from their said reservations, although compensation for the loss of such improvements was expressly provided in the nineteenth article of said treaty of September 27th, 1830.

That the defendant refused to deliver to 1,155 Choctaw heads of families, who were entitled to reservations in *fee-simple*, on the 24th day of February, 1836, the certificates for which provision was made in the third section of the act of Congress approved the 23d of August, 1842, and which is named in said special plea, unless such heads of families would consent to remove from the State of Mississippi to the Choctaw country west of the Mississippi River; and this refusal was made in violation of the provisions of the said third section, under which it was deliverable; and this course was resorted to as a means of coercing the said Choctaw heads of families, through their known helpless, homeless, and impoverished condition, and their need of something upon which to subsist, to remove, with their

children, from their reservations and homes in Mississippi to the west.

That the defendant refused to pay to the said Choctaw heads of families, and to their children or legal representatives, any portion of the money appropriated by the act of July 21st, 1852, until the said heads of families, and their children, and their legal representatives, to whom the same became payable, had removed out of the State of Mississippi to the country west of the Mississippi.

That the defendant refused to make any compensation to 960 Choctaws who emigrated, at their own expense, from the State of Mississippi to the Choctaw country west of the Mississippi River, and who subsisted themselves there for one year thereafter, although the defendant, by the stipulations of the sixteenth article of the said treaty of 1830, agreed to pay the expenses of such removal and subsistence.

That the defendant, by means of and through the acts of oppression and wrong-doing above set forth, and by means of its refusing to allow those entitled to reservations to acquire the same, and by reason of its allowing white people to drive them from their homes, and by means of the defendant's disposing of the lands to which they and their people were entitled, rendered the said Choctaws homeless; and by the same means, and the refusal to allow to them even the grossly-inadequate provisions made in said laws for payments in lieu of the homes and reservations of which they had been so deprived, and by means of other acts of violence, oppression, and outrage, reduced the said Choctaws named in the said special plea, and their children, and nearly all the persons of the said tribe remaining in the State of Mississippi, to a condition so impoverished, helpless, and destitute as that they became, and were, completely within the power and at the mercy of the defendant and its agents; and at the date of the said act of 1842, and thence on to the 22d of June, 1855, they continued to be in said helpless condition; and the said Choctaws, and heads of families and individuals, by reason of the wrongs and oppressions aforesaid, and their helpless condition, had no choice or option in or about the matter of accepting said moneys and scrip named in said plea on such terms and at such times as the defendant might and did dictate.

That at and before the 22d day of June, 1855, the defendant was justly indebted to the individuals of the said Choctaw Nation in the sum of $8,209,780, as a balance due for the value of the lands to which the said individuals of said Choctaw Nation became and were entitled under the said fourteenth article of the said treaty, which indebtedness arose as follows:

That of those individuals of the said Choctaw Nation who became, and were, entitled to reservations under the said fourteenth article, the defendant found, as in the said plea set forth, that 1,155 heads of families had complied with the conditions of the said fourteenth article, and were entitled to reservations thereunder; and further found that the quantity of land to which these 1,155 heads of families, and their children, became and were entitled, on the 24th day of February, 1836—the date of the expiration of the five years named in the said article—was 1,404,640 acres, which, at the date last aforesaid, was of the value of $5.50 per acre; making the aggregate value of the lands to which the said 1,155 heads of families and their children became and were entitled on the 24th day of February, 1836, $7,725,520.

That the defendant, through its agents and commissioners named in the said special plea, charged with the duty of ascertaining who were entitled to said reservations, rejected the claims of 246 heads of families to reservations under the said fourteenth article, but who were, in law and fact, justly entitled to said reservations by reason of their complying with all the conditions of said fourteenth article, or by reason of their attempting and tendering such compliance, and who complied fully with such conditions, except so far as prevented by the acts of the defendant through its officers and agents.

That the quantity of land to which the said 246 rejected claimants were so entitled on the 24th of February, 1836, was 268,120 acres, which was of the value, at the last-named date, of $5.50 per acre, making the aggregate value of the lands to which said rejected claimants were entitled $1,474,660, and making the aggregate to which both classes of claimants were entitled, to wit, the said 1,155 and the said 246 rejected claimants, equal to $9,200,180.

From this aggregate the defendant became, was, and is entitled to have deducted, as credits, the sum of $118,400,

the amount realized by the Choctaws, who received the certificates named in the third section of the act of the 23d of August, 1842, and which was, by the said section, deliverable east of the Mississippi River. And the defendant became further entitled to be credited—on account of moneys appropriated and paid in lieu of certificates deliverable under the said last-named section west of the Mississippi River—with the sum of $872,000, the said two credits amounting to the sum of $990,400, and leaving the balance of the said indebtedness, as above stated, $8,209,780.

That notwithstanding said indebtedness last aforesaid, and notwithstanding the fact that the appellant and the said individuals of the said Nation to whom said indebtedness was owing, earnestly pressed the payment of the said claim or the securement of their said reservations, and continued to do so during all the period from the time that it became due until the said 22d of June, in the year 1855, yet the defendant never paid the said indebtedness or any part thereof, except as hereinabove set forth.

That subsequently to the passage of the act of July 21, 1852, as well as before that date and subsequently, as well as before the date of the alleged release set forth in the said special plea, and continuously up to the 22d of June, 1855, the appellant had asserted, and continued to assert, against the defendant the claims for the losses sustained by the said appellant and the said individuals of the said Nation in consequence of the failure of the defendant to carry out the stipulations of the said fourteenth article of said treaty, as well as those arising from the failure to carry out the provisions of the said treaty, which required the United States to remove the members of the said Choctaw Nation, at its own expense, from the State of Mississippi to the Choctaw country west of the Mississippi River, and likewise continued to present, assert, and demand payment for the loss of improvements for which they were entitled to be paid by the United States under the provisions of the said treaty, and also for losses of stock and farming utensils, and also for the loss and injuries resulting from their constrained removal from the State of Mississippi in violation of the terms of the said treaty, and also for the losses they sustained in consequence of the action of the

Government in its issue and delivery of the scrip authorized to be issued and delivered to them in lieu of, and as a substitute for, their lands, as provided in the third section of the act of August 23d, 1842.

That the above-named means resorted to by the defendant, through its agents, and by white people, against whose acts defendant was, as aforesaid, bound to protect the Choctaws and their property, which were resorted to for the purpose of depriving the said Choctaws of their said property, and driving them from the homes where they were entitled, and desired to elect, to remain, included within them, amongst many other means and resorts of like wrong, violence, and brutality, such acts as threats by United States officers and agents, telling these Choctaws that the United States Government meant to enforce, and would compel, their removal from the State; that the United States soldiers would be brought, with guns and bayonets, to compel them to go; that the United States would catch their children and tie their legs together like pigs and haul them off in wagons.

That the defendant, through its officers and agents, did seize one of the chiefs of the Choctaws, who, on behalf of the Choctaws, aided in making, and signed the said treaty of September the 27th, 1830, and bound him, and this publicly, as a means of intimidation of the Choctaws, and retained him as a prisoner until he escaped and fled to the swamps; and this so alarmed the people of said Choctaw Nation that they fled, with their women and children, to the woods and swamps, where they were subsisted only by "slipping into their cornfields at night," and carrying thence to their women and children in the swamps corn for such subsistence.

That these are but examples of the wrongs, too various and numerous to be here set forth, inflicted by the defendant, through its agents, and by white men, against whose acts defendant was bound to protect the Choctaws, and which wrongs were inflicted generally, purposely, and continuously, in order to compel them to surrender their lands named in said fourteenth article.

That these acts of wrong, violence, and intimidation so continued, as above stated, during the twenty-two years from A. D. 1831 to A. D. 1853, and were such as to reduce the said Choctaws, so entitled and electing to remain under

said fourteenth article, to the condition in which they are declared to have been in the report, of date 31st of July, 1838, made to the President by the commissioners appointed and acting under the said act of Congress named in said special plea, to wit, the act of the 3d day of March, 1837, in which they are declared to have been "wantonly driven from their homes, and to have, for several years, been wanderers, living about in all seasons in open camps, and seeking a precarious subsistence, which scarcely sufficed to keep them alive;" and that into substantially this condition were a large portion of the said Choctaw people named in said special plea reduced and kept by the wrongs aforesaid during all said period of twenty-two years; said Choctaw people being peaceful and orderly and inoffensive towards the Government of the United States, and the people thereof, and being, as the last-named report declares, "shy and reserved in their intercourse with the whites."

That when the Choctaw people so entitled to reservations, as to the great body of them, were, by the wrongs aforesaid, reduced to and kept in the said condition of "extreme wretchedness—wanderers, living about, in all seasons, in open camps, and seeking a precarious subsistence, which scarcely sufficed to keep them alive"—the Government of the United States, through its agent having official charge of the affairs of the Choctaw people, publicly, and in part for the purpose of intimidating and driving them from their homes, urged and recommended, as the most effective mode of enforcing their emigration, the passage of a law to arrest the "wandering Indians as vagrants, and bind out their children as apprentices, if found within the States after a given date;" and it was declared "that such a law would induce them speedily to remove."

That it was in this condition of the Choctaw people, so brought about by the wrongs of the defendant, and by means and by reason of said wrongs, that the said defendant compelled the appellant, and the individuals of the said Nation, to accept, so far as they ever did, the payments of money and scrip, and the Nation to execute the release, which are in the said special plea set forth.

That at and after the execution of the said release the said claimant and the said individuals, through their representatives and otherwise, made known to the Government

of the United States that the said acts were the result of coercion, were unjust, and not binding as a final settlement, according to the terms of said alleged release, and the appellant and the said individuals of the Nation continued to press the said claims for said balances due them under said fourteenth article up to the said 22d day of June, 1855, as above set forth.

That at the times of the commission of the grievances above set forth, the appellant, and the said heads of families, and all the individuals of the said Nation, were entitled to receive from the United States, under and by virtue of the said treaty of the 27th of September, 1830, the same protection, in their persons and property, from wrongs, as citizens of the United States are entitled to demand from their Government, and were entitled to have secured to them, from the United States, "every possible degree of justice;" and were, moreover, then and there, and in virtue of the express stipulations of said treaty, entitled to have such construction of the said treaty as that, whenever well founded doubts should arise, such treaty should be construed most favorably towards the Choctaws.

That at the time of the ratification of the said treaty of the 27th of September, 1830, and ever since the said time, the said Choctaw Nation, and the said heads of families thereof, and all the individuals of the said Nation, were, on account of their dependent and helpless condition, and their other relations to the Government and people of the United States, the dependents and wards of the said Government of the United States, and were so recognized and declared by the law of the land; and, in virtue of and owing to the said dependent and helpless condition, were, by law, entitled to receive from the Government of the United States, in the protection of their persons and property, and in the securement of all their treaty and other rights, the fullest protection, and just, fair, and liberal treatment.

That, in consideration of all the matters, things, and premises hereinbefore and above set forth, and in consideration of the desire of the United States that the Choctaw Indians should relinquish all claim to any territory west of the 100th degree of west longitude, and the desire of the United States to make provision for the permanent settlement within the Choctaw country of the Wichita

and certain other tribes or bands of Indians, by securing from the Choctaws and Chickasaws a lease to the United States of their territory west of the 98th degree of west longitude; and in further consideration of the desire of the United States to embody all subsisting treaty stipulations in one comprehensive instrument, and to adjust and settle upon considerations just, fair, and liberal, all the claims of the said Nation, and of the heads of families and individuals thereof, against the United States, hereinbefore referred to; and in further consideration of the desire of the United States to have the said Choctaw Nation assume the burden and responsibility of the payment, to the heads of families and individuals of said Nation, of any moneys owing to them by the United States; and the United States desiring that said claims should be adjusted upon considerations just, fair, and liberal, and the said Choctaws desiring to secure a settlement of said claims of the said Nation, and also of the said heads of families and individuals of the said Nation hereinbefore set forth and referred to—

The United States entered into a treaty with the said Choctaw Nation, bearing date the 22d day of June, in the year of our Lord 1855 (11 Statutes at Large, p. 611), wherein and whereby it was stipulated and agreed between the United States and the said Nation that the Choctaws should, and they thereby did, cede to the United States the said tract of land lying west of the 100th meridian; and said treaty did provide for settling, within the Choctaw country other tribes or bands of Indians; and in such treaty the United States did stipulate, in its twenty-first article, that it shall supersede and take the place of all former treaties between the United States and the Choctaws, and also for the settlement, by the award of the Senate of the United States, of the claims so preferred by the said Choctaws against the United States, and named in said plea, including the claims of the 1,155 heads of families named in said special plea; and stipulated that such settlement should be made upon terms and "considerations just, fair, and liberal;" all of which will more fully appear by reference to said treaty.

That by means and reason of all the premises aforesaid and hereinabove set forth, and especially by means and reason of the wrongs and injustice to which the said

Nation of Choctaws, and the individuals thereof, were subjected in and about their property and rights, under the said treaty of September 27, 1830, in the fourteenth article thereof;

And by reason of the grossly inadequate amount and value of the payments made to them, as set forth in the said special plea, as contrasted with the value of the said property which purports to be released by said alleged release in the special plea set forth, and which was secured to them by the said fourteenth article, as above set forth;

And by reason of the coercion, violence, and oppression to which they were subjected in and about being deprived by the defendant, and the officers and agents thereof, of their said property, secured by the said fourteenth article, as above set forth;

And by reason of the acts of the appellant, and of the individuals of the said Nation, which are in said plea set forth in regard to the receipt of scrip and money, and the execution of the pretended release, set forth in the said plea—in so far as done at all—not being the voluntary acts of the said Nation, or of any individual thereof, but, on the contrary thereof, such acts, so far as done, being done under the coercion and compulsion of the defendant, exercised through its laws, officers, and agents;

And by reason of the fact that to hold said release and said receipt of scrip and money, as in the special plea set forth, to constitute a bar to the claims purporting to be covered by said release, would be grossly unjust, unfair, and illiberal under the facts herein set forth;

And by reason of the covenants and stipulations contained in the said treaty of the 22d of June, 1885, aforesaid, any and all releases, acquittances, and bars of said claims which, in law or equity, might, but for the matters herein replied, arise or be implied from the matters and things in said special plea set forth, as a bar to said claims, were and are rendered void, set aside, and annulled by means and reason of the facts and things herein replied; and claimant avers that it was, by both parties to said treaty of the 22d of June, A. D. 1855, meant, intended, and agreed that, for the considerations aforesaid, upon which said last-named treaty was based, the stipulations of said treaty should, and the same did, waive, cancel, annul, and set aside any and all releases and acquittances, if any,

which might have arisen, or which did arise, out of the matters in said special plea set forth; and any and all such acquittances, releases, and bars, if any arose or did exist, which claimant denies, were and are set aside and annulled by the terms and effect of said treaty last aforesaid. And in consideration and by reason of all the premises and facts aforesaid, the said appellant and the said heads of families and the said individuals of the said Nation became and are entitled to recover their said claims, in the petition and in the said special plea set forth; and such right to such recovery and payment is freed and discharged from any and all defences which could or might, in law or equity, be otherwise set up, by the defendant, under or in virtue of, or connected with, the said alleged release in the said special plea mentioned, and freed from any defenses arising from or in virtue of any and all payments to, and receipts by, the said appellant, or the individuals of such Nation, whether such payment was of the scrip named in the said special plea, or of the said $872,000 paid in lieu thereof, except such defense as consists in crediting to the United States, at its actual value, what was, in fact, paid to such claimant and to the individuals of the Nation upon account of the lands named in said fourteenth article, which credits have been allowed in the claim made in claimant's petition.

That, pursuant to the stipulations of said treaty, all the said claims were submitted to the Senate for its adjudication, and the said Senate, with full knowledge of said release, and after due consideration thereof, in connection with said claims, on the 9th day of March, 1859, adjudged that on account of said claims, and in full satisfaction of the same, there should be allowed to the said Choctaws the net proceeds of the sales of their lands, which said judgment is in the words following, to wit:

"That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the first day of January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of $1.25 per acre; and further, that they be also allowed twelve and one-half cents per acre for the residue of said lands."

Wherefore the plaintiff says that the said release, and the receipt of the said scrip, and of the said $872,000 (in so far as in fact received), and which are in said special plea set forth, do not, nor does either of them, constitute any bar to the said claim of the appellant set forth in said special plea, or of the said claim of the said 1,155 heads of families, nor are the same a bar to any other claims mentioned in said special plea.

Record, pp. 41 to 51, inclusive.

The answer of the United States to the foregoing replication of the appellant was filed on the 18th of March, 1885, and is a general denial of the allegations of the replication.

Record, p. 51.

The Court of Claims found the facts substantially as stated in the petition in regard to the extent of the claims to reservations which had been asserted by Choctaw heads of families under article XIV of the treaty of 1830.

Findings of fact XII, XIII, XIV, XV, Record, pp. 71, 72.

That court also found the facts stated in the defendant's special plea substantially as avered by the defendant.

Findings VIII, IX, X, XI, XIII, XIV, XV, XXI, XXIII, Record, pp. 63, 64, 65, 66, 67 to 70, 71, 72, 73, 74, 75.

In regard to the facts averred in the replication of the appellant, the Court of Claims found the following facts:

1st. That the agent (who was William Ward, the United States Agent for the Choctaws) in the employment of the Government, in carrying out the treaty with the Choctaws, discouraged applications for reservations under the fourteenth article, and Colonel Ward advised the removing agents to threaten the Indians with punishment if they did not emigrate.

Finding VII, Record, p. 63.

2d. Ward, the agent, was instructed by the War Department on the 21st of May, 1831, to receive the application of the Indians under the fourteenth article. His office was formally opened for business the latter part of June following. He had received and filed thirty-five applications before that time. That said Ward "was unfit for the duties of the situation; his conduct was marked by *acts* calculated to deter the Indians from making application; he was abusive and insulting to them, *intending thereby to prevent them from making application under said article, and necessitate their going west of the Mississippi.*"

Finding IX, Record, p. 66.

3d. That said Ward "insisted *during the registration* that there must be a personal application by the head of each family by those who desired the benefits of the fourteenth article; that he could not recognize applications by proxy." He insisted that the Indians had sold their land; that he had been instructed to induce as many as possible to go west; that more had been registered than had been anticipated.

4th. That after the 24th of August, 1831, the agents of the United States (Armstrong and Lane) insisted that those whose names were not registered should go west, and if they did not go soldiers would be sent to drive them out; that they would take their children from them, and many other threats were made by them.

5th. At the time of the report of the commissioners under the acts of 1837 and 1838, to wit, on the 31st day of July, 1838, about 5,000 remained in Mississippi. *Notwithstanding the efforts of the removing agents of the Government to remove them, they remained, asserting their intention to do so, and claiming the benefit of the fourteenth article of the treaty of* 1830. It was the intention of those remaining east of the Mississippi to take the benefit of the fourteenth article of the treaty.

Finding IX, Record, p. 67.

6th. On the 31st of July, 1838, when the commissioners appointed under the act of Congress approved March 3d,

1837, (5 Stats. at Large, 180,) made their report to the President, the condition of those Choctaw heads of families who were entitled to reservations under said article XIV was described as follows:

The Choctaw Indians are shy and reserved in their intercourse with the whites, and do not readily mix with them. It is proved in a great number of cases that they have been most wantonly abused and ill-treated by them, and that they could not live in peace in the same neighborhood. The large stocks of cattle and hogs introduced by the white settlers destroyed their crops, and their houses and cabins were torn down, burned, or taken possession of by them when they left home on their necessary hunting expeditions or to seek employment in picking cotton, &c. Under these circumstances they were compelled in a great number of cases to remove. It is in proof, also, that many removed in consequence of reports circulated among them that the lands occupied by them had been sold by the Government, and when it was impossible for them to ascertain the truth or falsehood of such reports. They well knew, however, from bitter experience that, whether true or false, they were at the mercy of their white neighbors. The instances are not rare, as the evidence abundantly shows, in which families have been wantonly driven from their homes and have for several years been wanderers, living about in all seasons in open camps and seeking a precarious subsistence, which scarcely sufficed to keep them alive.

Finding VIII, Record, p. 66.

7th. That "many heads of Choctaw families, *who either signified their purpose to remain or were prevented from doing so by the acts of the agents of the United States*, were driven from their reservations by white settlers, and before any classification was made under any law passed by Congress the lands of such reservees had been sold to the number of eleven hundred and fifty, and such heads of families prevented from securing their claims under the fourteenth article. Said eleven hundred and fifty Choctaw heads of families had 1,470 children over ten years of age on the

27th of September, 1830, and 1,219 children under ten years of age at that date."

Finding XII, Record, p. 71.

8th. That "under the provisions of the act of Congress approved August 23, 1842, the United States having failed to grant to the said Choctaw heads of families the lands which they and their children claimed under said treaty, and having disposed of the said lands, so that it was impossible to give said Choctaw heads of families the lands whereon they resided at the date of the treaty of 1830, did, between June, 1843, and November, 1851, issue and deliver to the said eleven hundred and fifty-five Choctaw heads of families, and to their children, the certificates or scrip provided for in the said act for one million four hundred and four thousand six hundred and forty acres of land, *which certificates or scrip the said Choctaw heads of families and their children were required by the United States to receive and accept in lieu of the reservations of land which, under the said fourteenth article of the treaty, the said Choctaw heads of families and their children claimed.*

"*The United States refused to deliver to the said Choctaw heads of families and their children that one-half of the scrip which might have been delivered to them under the provisions of the said act of Congress east of the Mississippi River until the said Choctaw heads of families and their children had either started for, or actually arrived in, the Choctaw territory west of the Mississippi River.*"

Finding XIV, Record, pp. 71, 72.

9th. That "the claimants under the fourteenth article, the said Choctaw heads of families and their children, *were reduced to a helpless condition of want, which rendered it practically impossible for them to contend with the United States in their requirement that the said Choctaw heads of families should accept and receive the scrip provided to be issued to them in lieu of the reservations by the act of* 1842*; and the said scrip and the money paid to redeem the same were taken and accepted because they were powerless to enforce any demands against, or impose conditions upon, the United States.*"

Finding XVI, Record, p. 72.

10th. That "the average value of the land ceded by the treaty of 1830, and to which the reservations provided by the treaty applies, was, in 1830 and 1831, the sum of $1.85 per acre."

Finding XXIX, Record, p. 85.

11th. That *the value of the scrip* issued to the said Choctaw heads of families and their children *in lieu of the reservations to which they were entitled*, as stated in the *fourteenth* finding, is shown in an official communication of the Commissioner of Indian Affairs to Hon. W. K. Sebastian, chairman of the Committee on Indian Affairs of the United States Senate, as follows:

There is no data in this office from which to ascertain with certainty the disposition made or the amount realized by the Choctaws for their scrip. It appears, however, by a statement made by Superintendent Rutherford in September, 1847, that of 1,401 pieces of scrip transferred in the year "1846 and the first part of 1847," that 213 halves, 227 quarters, and 190 eighths were transferred by the holders to individuals in consideration of services; that 78 halves, 95 quarters, and 92 eighths were sold for 50 cents per acre; that 33 halves, 50 quarters, and 50 eighths were sold at $200 per section; that 284 Indians, who denied the claims of agents, sold 73 halves, 122 quarters, and 89 eighths at $200 per section; that 80 *pieces* sold 6 halves, 40 quarters, and 34 eighths at $400 per section; and that 9 persons sold 3 halves, 1 quarter, and 5 eighths at $480 per section.

It is presumed that these sales present a pretty fair sample of the disposition made and the average prices realized for the balance of the scrip.

Finding XXX, Record, p. 86.

An examination of this statement shows that this scrip was worth to the said fourteenth-article claimants about *twenty-one and one-half cents per acre.* The United States charged them for it $1.25 per acre. The Court of Claims found that the lands to which the reservations applied, and

to which said claimants were entitled, were worth $1.85 per acre in the years 1830 and 1831.

The appellant contended that by force of these facts thus found by the Court of Claims, and by reason of the relation of guardian and ward which existed between the parties, the acts done by the appellant under the provisions and requirements of the acts of March 3, 1837, February 22, 1838, August 23, 1842, and July 21, 1852, were involuntary, and that the release set out in the defendant's special plea was *void;* that by force of the provisions of the treaty concluded between the United States and the appellant on the 22d day of June, 1855, the said release was set aside and was not admissible as a defense to "the rights and claims" of the said Choctaw heads of families and their children, for whom the said release was executed; and that said release did not bar or preclude the said Choctaw heads of families and their children, upon a "review of the entire question of differences *de novo*," from asserting, either before the Senate of the United States or before the Court of Claims, the allowance of that "FURTHER AND FULL SATISFACTION" for which the treaty of 1855 made provision.

The Court of Claims held, however, that the acts done by the appellant under the provisions and requirements of the above-specified acts of Congress, and the execution of the said release set out in the defendant's special plea, constituted a complete bar to the assertion of any further or other claim against the United States by the said *eleven hundred and fifty-five* Choctaw heads of families and their children who were specified in said defendant's special plea.

Record, pp. 109 to 115.

The said court also held that those fourteenth-article claimants whose claims were rejected by the commissioners under the acts of 1837 and 1842, and who received from the United States no compensation for the reservations to which they were entitled, could have their claims considered

and allowed by the Court of Claims in the present proceedings. The court thereupon allowed to 191 of said fourteenth-article claimants the value of 225,760 acres of reservations, which the court found to be worth in 1830 and 1831 $1.85 per acre, or the sum of $417,656.

Findings XIII and XXIX, Record, pp. 71, 88, 94, 116, 118.

OTHER CLAIMS UNDER THE TREATY OF 1830.

The appellant also asserted claims for the non-performance by the United States of the stipulations of the *fifteenth*, *sixteenth*, *nineteenth*, and *twentieth* articles of the treaty of 1830, amounting to the sum of four hundred and eighty-nine thousand five hundred and thirty dollars and thirty-two cents ($489,530.32).

B. *Claim for the Pay of an Additional Principal Chief under Article XV.*

The claim under article XV was for the pay of an additional principal chief, for twenty years, at five hundred dollars per year, amounting to ten thousand dollars ($10,000).

Record, p. 9, par. 12.

The Court of Claims found that, since the ratification of the treaty of 1830, *it does not appear that the Choctaw Nation has elected an additional principal chief for said Nation.*

Finding XVII, Rec., p. 72.

This claim was rejected for that reason, and no question of law is presented for consideration by such rejection upon the facts found by the Court of Claims.

C. *Claim for Self-emigration and Subsistence under Article XVI.*

The claim under article XVI was for the expenses incurred in the removal and subsistence of nine hundred

and sixty Choctaws who emigrated and subsisted themselves at their own expense between the years 1834 and 1845. This expense the United States by that article assumed and agreed to pay. The appellant claimed on this account the sum of fifty-one thousand nine hundred and ninety-eight dollars and forty cents ($51,998.40).

Record, p. 9, par. 13.

The court found that nine hundred and sixty Choctaws had, between the dates stated in the petition, emigrated and subsisted themselves at their own expense for one year, and that the commutation value in money for such emigration and subsistence was $54.16 for each emigrant, and therefore allowed this claim for *fifty-one thousand nine hundred and ninety-three dollars* ($51,993).

Finding XVIII, Record, pp. 72, 73, 94, 122, 123.

D. *Claim under Article XIX.*

The claim under article XIX was for the value of the reservations made by that article for the benefit of those Choctaw heads of families who during the year 1830—in the language of the treaty, "during the present year"—had "*in actual cultivation*" a certain number of acres of land, "*with a dwelling-house thereon.*"

Article XIX provides as follows:

The following reservations of land are hereby admitted:

To Colonel David Folsom four sections, of which two shall include his present improvement, and two may be located elsewhere on unoccupied, unimproved land.

To I. Garland, Colonel Robert Cole, Tuppanahomer, John Pitchlynn, Charles Juzan, Johoke-tubbee, Eaychahobia, Ofehoma, two sections each, to include their improvements, and to be bounded by sectional lines, and the same may be disposed of and sold with the consent of the President. And that others not provided for may be provided for, there shall be reserved as follows:

First. One section *to each head of a family*, not exceeding

forty in number, *who, during the present year, may have had in actual cultivation, with a dwelling-house thereon, fifty acres or more. Secondly.* Three quarter-sections, after the manner aforesaid, to each head of a family, not exceeding four hundred and sixty, as shall have cultivated thirty acres and less than fifty, to be bounded by quarter-section lines of survey, and to be contiguous and adjoining.

Third. One half-section as aforesaid to those who shall have cultivated from twenty to thirty acres, the number not to exceed four hundred.

Fourth. A quarter-section as aforesaid to such as shall have cultivated from twelve to twenty acres, the number not to exceed three hundred and fifty, and one-half that quantity to such as shall have cultivated from two to twelve acres, the number also not to exceed three hundred and fifty persons. Each of said class of cases shall be subject to the limitations contained in the first class, and shall be so located as to include that part of the improvement which contains the dwelling-house. If a greater number shall be found to be entitled to reservations under the several classes of this article than is stipulated for under the limitation prescribed, then, and in that case, the chiefs separately, or together, shall determine the persons who shall be excluded in the respective districts.

The appellant asserted claims on behalf of *fourteen hundred and thirteen* (1,413) of such Choctaw heads of families who had during the year 1830 "from two to twelve acres of land in actual cultivation," with a dwelling-house thereon, but who received no reservations, because they belonged to the fifth class, which was limited as to number to 350, while there were in fact 1,763 in this class who were heads of families and who had the improvements required by the treaty. It was alleged that the said specified number of Choctaw heads of families were entitled to one hundred and thirteen thousand and forty (113,040) acres of land, and that other persons for whom reservations were provided in said article were entitled to receive twenty-three thousand two hundred (23,200) acres. The amount claimed

on behalf of these reservees was four hundred and eight thousand seven hundred and twenty ($408,720) dollars.

Record, pp. 9, 10, 11, par. 14.

The Court of Claims allowed the claims of those persons who were entitled to twenty-three thousand two hundred (23,200) acres, at the rate of one dollar and eighty-five cents ($1.85) per acre, or an aggregate of forty-two thousand nine hundred and twenty ($42,920) dollars.

That court rejected the claims of the said fourteen hundred and thirteen (1,413) heads of families for whom reservations to the extent of one hundred and thirteen thousand and forty (113,040) acres were made by the treaty of 1830, although the court also found that said heads of families to the number above specified had the improvements required by the treaty.

Finding XLI, Record, pp. 93, 94, 117, 118.

The claimant's contention was that the claims of the said Choctaw heads of families to whom no reservations were assigned—the said fourteen hundred and thirteen (1,413) heads of families—were entitled to have their claims considered and allowed for the following reasons:

1st. Because the *nineteenth* article of the treaty of 1830 *had specially reserved* four hundred and fifty-eight thousand four hundred (458,400) acres for the purpose of satisfying the claims of those who had improvements *and were to remove from the State of Mississippi.* These were known as Cultivation Claims, and were to be recognized and satisfied to the extent of the quantity of land reserved for that purpose; and that inasmuch as the satisfaction of all the claims recognized and allowed by the United States had absorbed only *one hundred and twenty-three thousand six hundred and eighty* (123,680) acres of the quantity *reserved,* the United States was, in justice and equity, bound to satisfy the claims of those not expressly provided for *by the*

language of the treaty out of the surplus of reservation which the United States retained after satisfying the claim of those who were recognized as entitled to reservation under the provisions of that article of the treaty.

2d. Because the provisions of the treaty of June 2 1855, authorized an examination of all the "rights an claims" of all Choctaw heads of families upon principle "*just, fair, and liberal*," and provided for a "*further an full satisfaction*" to those Choctaw heads of families whos claims had not been adjusted and settled by the Unite States either wholly or in part.

3d. Because any "review" of the "question of diffe ences *de novo*" was to be made by the Court of Claims upo the principles of the treaty of 1855, and that treaty woul justify the allowance of compensation to the said *fourtee hundred and thirteen* (1,413) Choctaw heads of families fo their improvements which were surrendered to the Unite States, even if provision for compensation to said heads o families, for said improvements, was not expressly provide by the *nineteenth* article of the treaty of 1830; and that th Court of Claims should have allowed to the said Choctaw heads of families who received no compensation for thei improvements under the treaty of 1830, the further sum o *two hundred and nine thousand one hundred and twenty-fou* ($209,124) *dollars.*

E. *Claims for Rifles, Moulds, and Ammunition under Articl* XX.

The claim under article XX was for the value of th "rifle, moulds, and ammunition" which the United State agreed to furnish "*to each warrior who emigrates.*" There were *fourteen hundred and fifty-eight* (1,458) Choctaw warriors who emigrated from the State of Mississippi t the Choctaw country west between the years 1834 an

1855 who were not furnished by the United States with the "rifle, moulds, and ammunition" specified in the treaty.

It was alleged that said "rifle, moulds, and ammunition" were reasonably worth to the said Choctaw warriors thirteen dollars and fifty cents ($13.50) each, or an aggregate for all of said warriors amounting to the sum of nineteen thousand two hundred and seventy-eight dollars ($19.278).

Record, p. 11, par. 15.

The Court of Claims allowed on account of this class of claims eighteen thousand ($18,000) dollars to twelve hundred and thirty-six (1,236) Choctaw warriors who were removed by the United States subsequent to the year 1843.

Finding XIX, Record, pp. 73, 94, 123.

F. *Claim for Unpaid Interest Due on Scrip Funded under the Act of March 3d, 1845.*

The appellant also asserted a claim for one hundred and thirty-four thousand one hundred and fifty dollars and sixty-six cents ($134,150.66), for interest payable on that one-half of the scrip which had been issued to the *fourteenth-article claimants* in lieu of their reservations, as provided in the third section of the act of August 23d, 1842, and *funded by the United States*, under the provisions of the act of March 3d, 1845. The amount of the scrip which was funded was eight hundred and seventy-two thousand dollars ($872,000). The amount of *interest* which accrued on that amount of *funded scrip* between March 3d, 1845, and July 21st, 1852, was three hundred and five thousand five hundred and fifty-one dollars ($305,551). During that period the United States paid to the said *fourteenth-article claimants*, in whose names the said scrip had been funded, or to their heirs and legal representatives, one hundred and seventy-one thousand four hundred dol-

lars and thirty-four cents ($171,400.34), and no more That the difference between said sums was due and payabl to the said fourteenth-article claimants.

Record, pp. 11, 12, 13, par. 16.

The Court of Claims, upon this claim, found that th scrip was funded as alleged; that the amount of interes paid was the amount alleged in the petition; that the scri was withheld from the fourteenth-article claimants, fo whose benefit the same was funded, until such claimant had arrived in the Choctaw territory west of the Missis sippi River; that the allowance of the unpaid interest o said funded scrip was barred by the release executed b the Choctaw National Authority, as required by the act o July 21st, 1852; *and that the right to said unpaid interes "being an incident of a claim under the fourteenth article, from the payment of which the United States was discharged by sai release, the right to interest ceased with the extinguishment of th original cause of action.*"

Findings XV and XX, Record, pp. 72, 73, 121, 122.

EXTENT OF CLAIMS ASSERTED AT THE DATE OF THE TREATY OF 1855.

The amount of claims which existed and were asserted by and on behalf of the appellant against the United States, *as stated in its petition*, as existing at the date of the treaty of June 22, 1855, was, therefore, eight million eight hundred and forty-three thousand one hundred and sixty dollars and ninety-eight cents ($8,843,160.98). The Court of Claims in its judgment allowed on account of said claims as follows:

For claims under article				XIV.....	$417,656 00
"	"	"	"	XVI.....	51,993 00
"	"	"	"	XIX.....	42,920 00
"	"	"	"	XX.....	18,000 00
					$530,569 00

Record, p. 94.

The appellant contended that the Court of Claims should, if it examined and adjudged the claims and demands of the appellant "*de novo*," have allowed further sums, as follows:

1st. To the eleven hundred and fifty-five Choctaw heads of families and their children the reasonable value of the reservations which they were entitled to have granted to them in *fee-simple* on the 24th day of February, 1836. That such reasonable value on that date was *five dollars and fifty cents per acre.* That there were one million four hundred and four thousand six hundred and forty acres of reservations due to said eleven hundred and fifty-five Choctaw heads of families *in fee-simple* on that date. That these fourteenth-article claimants should have been allowed, as the value of said reservations at that date, the sum of six million seven hundred and two thousand six hundred and fifty-nine dollars and eighty cents ($6,702,659.80). This amount is produced by charging the United States with the reasonable value of these reservations on the 24th day of February, 1836, and deducting therefrom the amount paid in cash for the redemption of the *funded scrip* ($872,000) and the amount received by said claimants for the *unfunded scrip* which they were *required* to receive in the Choctaw Nation west of the Mississippi River. (Finding XIV.) The amount received for the *unfunded* scrip, at twenty-one and one-half cents per acre, was $150,861.20. (Finding XXX, Record, p. 85.) The amount received for *funded* and *unfunded scrip* was, therefore, one million twenty-two thousand eight hundred and sixty-one dollars and twenty cents ($1,022,861.20).

Findings XV and XXX, Record, pp. 72, 85.

2d. That the said one hundred and ninety-one Choctaw heads of families, who were also claimants under the *fourteenth* article, and to whom the court awarded the sum of four hundred and seventeen thousand six hundred and fifty-six dollars ($417,656) as the value of 225,760 acres of

reservations "*in* 1830 *and* 1831" (Finding XXIX, Record, p. 85), should have been allowed the reasonable value of said reservations *on the 24th day of February*, 1836; and that said fourteenth-article claimants should have been allowed the sum of one million two hundred and forty-one thousand six hundred and eighty dollars ($1,241,680) instead of the sum which the court did allow to said claimants, to wit, four hundred and seventeen thousand six hundred and fifty-six dollars ($417,656).

3d. That the Court of Claims should have allowed to the *nineteenth*-article claimants, who received no reservations under that article because they belonged to a class of reservees which exceeded the number specified in the treaty, the sum of two hundred and nine thousand one hundred and twenty-four dollars ($209,124).

THE CLAIMS ASSERTED BY THE APPELLANT UNDER THE ADJUDICATION AND DECISION OF THE SENATE.

The appellant had asserted before and subsequent to the conclusion of the treaty of June 22, 1855, that it was, in justice and equity, entitled to receive the amount of the net proceeds of the sales of the lands ceded by it to the United States by the treaty of 1830; and said claim, so made and asserted by the appellant against the United States, was one of the differences and controversies existing between the appellant and the United States when the treaty of June 22, 1855, was made and concluded between the United States and the appellant.

Record, pp. 13, 14, par. 17.

That for the purpose of adjusting and bringing to a final adjustment and settlement the rights, interests, and claims of the appellant against the United States, commissioners were appointed by the appellant, who were "clothed with full power to settle and dispose of, by treaty or otherwise,

all and every claim and interest of the Choctaw people against the Government of the United States, and to adjust and bring to a final close all unsettled business of the Choctaw people with the said Government of the United States."

Record, pp. 14, 15, par. 18.

The said commissioners, thus authorized, on the 23d day of June, 1855, concluded on behalf of the appellant a treaty with the United States, which contained the following preamble and stipulations in relation to the final settlement and adjustment of the claims then asserted by the appellant against the United States, to wit:

Whereas the political connection heretofore existing between the Choctaw and Chickasaw tribes of Indians has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a readjustment of their relations to each other and to the United States;

And whereas *the United States desire* that the Choctaw Indians shall relinquish all claim to any territory west of the one hundredth degree of west longitude, and also to make provision for the permanent settlement within the Choctaw country of the Wichita, and certain other bands of Indians, for which purpose the Choctaws and Chickasaws are willing to release, on reasonable terms, to the United States that portion of their common territory which is west of the ninety-eighth degree of west longitude; and whereas the Choctaws contend that by a just and fair construction of the treaty of September 27th, 1830, they are of right entitled to the net proceeds of the lands ceded by them to the United States under said treaty, and have proposed that the question of their right to the same, together with the whole subject-matter of their unsettled claims, whether national or individual, against the United States, arising under the various provisions of the said treaty, shall be referred to the Senate of the United States for final adjudication and adjustment.

ARTICLE XI. The Government of the United States not being prepared to assent to the claim set up under the

treaty of September 27th, 1830, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

First. Whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27th, 1830, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that a final settlement with them may be promptly effected; or

Second. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and if so, how much?

ARTICLE XII. In case the Senate shall award to the Choctaws the net proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just, the settlement and payment to be made with the advice and under the direction of the United States Agent for the tribe; and so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe shall, on their requisition, be paid over to them by the United States; but should the Senate allow a gross sum in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for and bound to pay all the individual claims as aforesaid, it being expressly

understood that the adjudication and decision of the Senate shall be final.

Record, pp. 15, 16, par. 19.

The Senate of the United States, acting under the authority thus conferred, entered upon the examination of the matters and questions thus submitted to it on the 18th day of March, 1856. The result of said examination was the adoption by the Senate on the 9th day of March, 1859, of the following preamble and resolution, to wit:

Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians provides that the following questions be submitted for decision to the Senate of the United States:

First, whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or,

Secondly, whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national or individual, against the United States; and, if so, how much:

Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the 1st day of January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of $1.25 per acre; and further, that they be also allowed twelve and a half cents per acre for the residue of said lands.

The said resolution thus adopted was the "*award and judgment*" of the Senate upon the matters and things submitted to it by article XI of the treaty of June 22, 1855,

and was so declared to be by the Senate. The Senate, by another resolution adopted on the same day, directed an account to be stated with the appellant by the Secretary of the Interior "showing what amount is due them according to the above-prescribed principles of settlements," which account, when stated, the Secretary of the Interior was required "to report to Congress."

Record, pp. 16, 17, par. 20.

The Secretary of the Interior performed the duty thus imposed, and on the 8th day of May, 1860, that officer transmitted to Congress an account between the appellant and the United States, which showed a balance due from the United States to the appellant amounting to two million nine hundred and eighty-one thousand two hundred and forty-seven dollars and thirty cents ($2,981,247.30).

Record, pp. 17, 18, par. 21.

The appellant averred that the said account, as stated by the Secretary of the Interior, was erroneous in the following particulars, which it prayed the court to correct, to wit:

1st. The error in stating that the proceeds of the lands sold up to January 1, 1859, and the residue of said lands, at 12½ cents an acre, amounted in the aggregate to $8,078,614.80.

Whereas the true amount of said aggregate was and should have been stated in said account to be $8,413,418.61.

2d. The error in stating that the cost of survey and sale of said lands, 10,423,139.69 acres was ten cents an acre, or $1,042,313.96.

Whereas the actual cost of said survey and sale was $256,387.74.

3d. The error in deducting from said aggregate of proceeds of lands sold the sum of $120,826.76 for amount to orphans for reservations.

Whereas the said sum of $120,826.76 was not deducted or taken or drawn from or in anywise included in or connected with the aggregate fund against which it is charged in the said account.

4th. The error in deducting from said aggregate the following items:

Payments made to meet contingent expenses of commissioners appointed to adjust claims under the fourteenth article of Choctaw treaty of September 27, 1830.....	$51,320 79
For various expenses growing out of the location and sale of Choctaw reservations and perfecting titles to the same, including contingent expenses, such as pay of witnesses, interpreters, etc., incurred in executing the act of March 3, 1837, and subsequent acts relative to adjusting claims under the fourteenth article of the treaty of 1830	21,408 36
	$72,729 15

All of which errors being corrected would show that the balance payable to the appellant under the award of the Senate was $4,295,533.24, instead of $2,981,247.30, as erroneously stated by the Secretary of the Interior, as will more fully appear from the following statement:

Proceeds of lands sold and amount of unsold residue, at 12½ cents per acre.....	$8,413,418 61

Deductions made by the Secretary of the Interior		$5,097,367 50
Findings XXXVI and XXXIX, Rec., pp. 88, 91, 93.		
From which deduct for errors, as follows:		
1st. Overcharge for survey and sale, being difference between	$1,042,313 96	
And	256,387 74	
	$785,926 22	
2d. Payments to orphans improperly charged	120,826 76	
3d. Charges for correcting errors of Government agents	72,729 15	
Total deductions for erroneous charges		979,482 13
Whole amount of proper charges		$4,117,885 37
Amount of proceeds as before stated		$8,413,418 61
Deduct amount of proper charges		4,117,885 37
Leaving a balance of		$4,295,533 24

Which sum was actually due to the appellant under the adjudication and decision, award, and judgment of the Senate when the account of the Secretary of the Interior was stated, and the appellant prayed judgment for said sum, after deducting $250,000 paid on account of said award, under the act of March 2d, 1861, and the further sum of $250,000 in bonds appropriated by the same act.

The said sums of $250,000 in money already paid and of $250,000 in bonds still due and separately claimed, making together $500,000, being deducted from $4,295,533,24, the

actual net proceeds, less all proper charges prior to 1861, leaves the sum of $3,795,533.24, for which, with five per cent. interest from March 9, 1859, until paid, the appellant prayed judgment.

Record, pp. 19, 20, par. 23.

The appellant also claimed interest on said award and judgment of the Senate, after deducting the amount paid thereon, and on account of said award and judgment, under the provisions of the act of Congress of March 2, 1861.

Record, pp. 22, 23, par. 27.

Defendant's Demurrer.

The United States, on the 26th of February, 1884, filed a demurrer to those paragraphs of the appellant's petition which stated the award and judgment of the Senate as a distinctive or separate cause of action. The demurrer was against paragraphs 18, 19, 20, 21, 23, and 27, and to schedules "A" and "B" of paragraph 31.

Record, p. 32.

Demurrer Overruled.

The demurrer of the defendant to so much of the appellant's petition as based its cause of action on the award and judgment of the Senate was, after argument and consideration thereof, overruled by the Court of Claims on the 3d day of March, 1884.

Record, p. 33.

Principles Announced by the Court of Claims in its Opinion on the Defendant's Demurrer.

The Court of Claims, in its opinion overruling the defendant's demurrer, stated the following propositions in regard to the adjudication and decision of the Senate:

1st. That "by agreement of the parties contained in the treaty this adjudication and decision was made final, and

so was and is conclusive, unless the finality and conclusiveness have been set aside by the concurrence of both parties, since neither party alone could disturb it."

2d. That "in our opinion that has been done for the purposes of the present case. On the one side Congress, representing the United States, passed the act of March 3, 1881, above set out in full, giving this court jurisdiction to try all questions of difference arising out of treaty stipulations with the Choctaw Nation. Therein it is further enacted that—

"'Power is hereby granted the said court to review the entire question of differences *de novo*, and it shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of eighteen hundred and fifty-five.'

"On the other side, the claimants, by coming into court, submitting to its jurisdiction thus conferred, and filing a petition, have assented to the terms of the act throughout.

"The adjudication and decision of the Senate is, therefore, by the subsequent acts and agreement of the parties, not to be taken as final and conclusive in the trial of this case."

3d. It does not follow, however, that the action of the Senate will be wholly without force or effect under any circumstances of the case, that it cannot be given in evidence for any purpose, and that all reference to it in the petition must be disregarded and ruled out on demurrer. The act does not so provide. The jurisdiction conferred is general to try all questions of difference arising out of the treaty stipulations. Power is then granted to the court to review the entire question of differences *de novo*. One of the questions of difference may be whether or not the adjudication and decision of the Senate was warranted by the facts. To review that question we must have the action of the Senate before us. The enactment does not exclude such action from the consideration of the court, but, on the contrary, implies that it may be rightly offered in evidence. As to the effect of such action, the act declares that the court shall not be estopped thereby.

4th. That "estoppel in law belongs to the branch of evidence. It precludes parties from contradicting one

piece of evidence by other evidence, however conclusive the latter might be if admissible. When, therefore, Congress by its enactment removed the estoppel which sprung from the action of the Senate under the treaty stipulations, and the claimants by their petition to this court agreed thereto, it left such action open to explanation and rebuttal by any facts which might be proved on the one side and the other in the trial of all questions of difference, but it did not so blot it out of the case as to exclude it from all consideration by the court."

5th. That "either party may put in evidence that adjudication, and if not controverted it may present the principles, so far as it goes, upon which our final decision will rest, but if controverted we shall consider whatever facts and arguments may be offered in relation thereto."

6th. That "while we hold that there has been no binding award in any particular which is final and conclusive in this court, under the act of Congress, we also hold, as already indicated, that the action of the Senate is properly introduced in the petition, that it may be presented at the trial as *prima-facie* evidence, and that under some circumstances it may become an important element in the decision of the case."

Record, pp. 36, 37.

Findings of Fact Relating to the Award and Judgment of the Senate.

The Court of Claims found the facts in relation to the making of the treaty of 1855 and the adjudication and decision of the Senate in substance as follows:

I. It found that the appellant appointed commissioners for the purposes specified in the petition; that said commissioners entered upon the discharge of their duties by presenting to the proper authorities of the United States on the 5th day of April, 1854, a communication stating the character and extent of their claims against the United States; that the statements of said communication were examined by an agent of the United States designated

for that purpose; that its statements were found to be substantially correct by such agent; that the discussion of the claims thus presented and asserted by the appellant was continued, and plans for their settlement discussed by the appellant and the United States down to the conclusion of the treaty of June 22, 1855.

Findings XXIV, XXV, XXVI, XXVII, XXVIII, Record, pp. 75 to 85, inclusive.

II. That subsequent to the ratification of the said treaty, which occurred on the 21st day of February, 1856, the following proceedings were had, to wit:

A. On the 18th day of March, 1856, the appellant, by its delegates, presented a memorial to the Senate praying that body to proceed to the adjudication of its claims against the United States according to the stipulations of said treaty, which memorial was, on the 18th day of March, 1856, referred for examination and report to the Committee on Indian Affairs of the Senate.

The claims mentioned in the preamble of the treaty of 1855, to wit, "their unsettled claims, whether national or individual," and mentioned in the eleventh article of the treaty as "their rights and claims against the United States," are the same which were presented to the Senate in the memorial referred to the Senate Committee on the 18th of March.

B. The Senate Committee considered said memorial, made an investigation, and heard arguments in support of the claims of the Choctaw Nation against the United States existing previous to the date of said treaty; and the Senate retained said memorial, and considered the claims and demands of the Choctaw Nation, as presented by said memorial, until the 9th day of March, 1859.

C. THE CONSIDERATION WHICH WAS GIVEN BY THE SENATE TO THE SUBJECTS-MATTER SO SUBMITTED TO IT BY THE SAID ELEVENTH ARTICLE OF THE SAID TREATY, AND TO THE EVIDENCE WHICH WAS SO PRESENTED TO, AND TAKEN AND CONSIDERED BY, THE SENATE, WAS FULL, FAIR, AND IMPARTIAL, AND ITS ADJU-

DICATION, AS MADE UNDER THE SAID ARTICLE, WAS NOT INFLUENCED OR AFFECTED BY, AND WAS IN NO WAY OR DEGREE THE RESULT OF, ANY FRAUD, CORRUPTION, OR PARTIALITY, AND THERE IS NO EVIDENCE TENDING TO SHOW THAT IT WAS THE RESULT OF SURPRISE OR MISTAKE ON THE PART OF THE SENATE, OR OF ANY MEMBER THEREOF.

Finding XXXVII, Record, pp. 89, 90.

D. That on the 9th day of March, 1859, the Senate of the United States, acting under and by virtue of the authority contained in the stipulations of said article XI of the treaty of June 22d, 1855, having considered the subject-matter of said claims and demands of the appellant against the United States, adopted and caused to be entered of record in the Senate of the United States the following preamble and resolution:

Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians provides that the following questions be submitted for decision to the Senate of the United States:

1st. Whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or, second, whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and if so, how much—

Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the 1st day of January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations, at the rate of one dol-

lar and twenty-five cents per acre; and further, that they be also allowed twelve and a half cents per acre for the residue of said lands.

And the said resolution, thus adopted on the said 9th day of March, 1859, was, by the Senate, declared to be its award and judgment upon the questions and matters submitted to it for adjudication by the eleventh article of the treaty of June 22, 1855.

Finding XXXVIII, Record, p. 90.

E. The Secretary of the Interior was directed by resolution of the Senate "to cause an account to be stated with the Choctaws showing what amount is due them according to the above-prescribed principles of settlement, and report the same to Congress;" and in obedience to the mandate of said resolution that officer did, on the 8th day of May, 1860, transmit to Congress a statement of account, as required by said resolution. The balance found to be due to the appellant by that statement was two million nine hundred and eighty-one thousand two hundred and forty-seven dollars and thirty cents ($2,981,247.30).

Finding XXXIX, Record, 90 to 93.

The whole quantity of lands ceded by the appellant to the United States by the treaty of 1830 was 10,423,139 acres. The aggregate amount received for the lands sold was $7,711,672.05.

The extent of reservations allowed and secured under the provisions of the treaty of 1830 was 334,101.02 acres, *in which was included the reservations made for the Choctaw orphans.*

Finding XXXV, Record, p. 88.

The amount of the proceeds of the sale of the lands sold; for that appropriated for military bounty lands located, being 172,196.47 acres, at $1.25 per acre; and for the residue of the lands remaining unsold on the 1st of January,

1859, being 3,892,006.70 acres, at 12½ cents per acre, aggregated $8,413,418.61.

The cost of the survey and sale of the said lands sold previous to January 1st, 1859, was $256,387.74.

Finding XXXVI, Record, pp. 88, 89.

The amount which was properly chargeable against the said proceeds of sale, as and for "*all proper expenditures and payments under said treaty*," was four million one hundred and seventeen thousand eight hundred and eighty-five dollars and thirty-seven cents ($4,117,885.37).

The appellant contended that by virtue of these facts, the Court of Claims, should have allowed to it so much as was shown to be due under and by virtue of the adjudication and decision of the Senate, to wit, the sum of four million two hundred and ninety-five thousand five hundred and thirty-three dollars and twenty-four cents ($4,295,533.24), *less the amount appropriated* as a payment on account of said award and judgment, under the provisions of the act of March 2, 1861. The amount appropriated was five hundred thousand dollars. The amount paid was $250,000. If the United States shall receive credit on said award and judgment *for the amount paid*, instead of the *amount appropriated*, by the act of March 2, 1861, then the amount which the appellant was entitled to receive on account of the award and judgment of the Senate was four million forty-five thousand five hundred and thirty-three dollars and twenty-four cents ($4,045,533.24).

All the claims which the appellant had asserted against the United States under the treaty of 1830 were merged in the award and judgment of the Senate; and the appellant conceded that its right of recovery in respect of its "*rights and claims*" under that treaty was under and upon the award and judgment of the Senate; and its petition expressly declares that said award and judgment must be the measure of its recovery in respect of such rights and

claims, unless the said award and judgment was set aside by the Court of Claims in the exercise of the power conferred by the jurisdictional act "TO REVIEW the entire question of differences *de novo*."

Record, pp. 21, 22, par. 26.

LEGAL QUESTIONS INVOLVED IN CONSIDERING THE FORCE AND EFFECT OF THE AWARD AND JUDGMENT OF THE SENATE, UNDER THE FACTS FOUND BY THE COURT OF CLAIMS AND THE PROVISIONS OF THE JURISDICTIONAL ACT.

The legal questions upon this subject may be concisely stated as follows:

1st. The award and judgment of the Senate being within the power and jurisdiction conferred by article XI of the treaty of 1855, and upon the matters submitted to it by that article, was necessarily final and conclusive, without regard to the provisions of article XII of that treaty, because no provision was made for a review of its adjudication and decision by any other tribunal.

2d. That award and judgment could not be set aside because of error of law or fact committed by the Senate unless the *error of fact* was so excessive and flagrant as to afford conclusive evidence of "corruption, fraud, or flagrant partiality" on the part of the Senate.

3d. It being found by the Court of Claims that there was neither fraud, mistake, corruption, partiality, nor surprise in the making or procuring of said award, there was no *legal* reason for setting it aside.

4th. It was not set aside by the language of the jurisdictional act, because the power conferred upon the Court of Claims by that act "TO REVIEW the entire question of differences *de novo*" is not *in law* the equivalent of a declaration that "the award and judgment of the Senate is

hereby set aside." The award and judgment of the Senate was preserved by the jurisdictional act for the purpose of enabling that court to exercise in respect to it the power "*to review*;" and in exercising the power "TO REVIEW" that court had no right to set aside said award and judgment, except for such causes as would authorize a judgment or decree or an award to be set aside under the general rules of law by which the validity and conclusiveness of judgments, decrees, or awards are to be determined.

5th. That the act of bringing a suit by the appellant under the authority of the jurisdictional act was not in law a waiver of its right to have the fruits of the award and judgment of the Senate, unless said award and judgment should be set aside by the Court of Claims as the result of its exercise of the power "TO REVIEW."

6th. That if the jurisdictional act must be construed as setting aside the award and judgment of the Senate, without the exercise of the power "TO REVIEW," then so much of the jurisdictional act as attempted to set aside said award and judgment, without the exercise of the judicial power "TO REVIEW," was unconstitutional and void.

The Court of Claims, however, held upon these questions substantially as follows:

1st. That the award and judgment of the Senate was rendered of no force or effect in this proceeding, because the appellant brought its suit in the Court of Claims under the authority of the jurisdictional act.

2d. That the jurisdictional act directed the Court of Claims to ignore the award and judgment of the Senate, without regard to the facts found by that Court, that there was in the said award and judgment *no infirmity of fact* which would justify the court in setting it aside in the exercise of its power "TO REVIEW."

3d. That the terms of the jurisdictional act, *and the action of the appellant under the authority of that act*, had destroyed the award and judgment; and the court was *required* "TO REVIEW the entire question of differences *de novo*," notwithstanding the award and judgment of the Senate under the treaty of 1855.

4th. That the jurisdictional act, "by reason of its peculiar provisions, destroyed the sanctity of the adjudication of the Senate; *and that the parties are remitted to their legal rights as they exist unaffected by the action of the Senate.*"

Record, pp. 103, 104, 105.

CLAIM FOR THE BONDS AUTHORIZED TO BE ISSUED TO THE APPELLANT UNDER THE PROVISIONS OF THE ACT OF CONGRESS APPROVED MARCH 2, 1861.

That act provided as follows:

For payment to the Choctaw Nation or tribe of Indians *on account of their claim under the eleventh and twelfth articles of the treaty with said Nation or tribe made the twenty-second of June, eighteen hundred and fifty-five, the sum of five hundred thousand dollars;* two hundred and fifty thousand dollars of which sum shall be paid in money, *and for the residue the Secretary of the Treasury shall cause to be issued to the proper authorities of the Nation or tribe, on their requisition,* bonds of the United States, authorized by law at the present session of Congress: *Provided*, That in the future adjustment of the claim of the Choctaws under the treaty aforesaid the said sum shall be charged against the said Indians.

12 Statutes at Large, 238.

The appellant made requisition for said bonds as required by said statute, but they were not delivered by the United States. The appellant therefore claimed the right to receive the amount of said bonds *with interest thereon at*

the rate of six per cent. per annum from the date when demand was made for said bonds.

Record, p. 26, pars. 24, 25.

The Court of Claims found that the bonds authorized to be issued under said act of Congress were never issued or delivered to the appellant, although the appellant by its authorized delegates and agents made requisition, and demand therefor from the Secretary of the Treasury on the 4th day of April, 1861.

Finding XLI, Record, p. 93.

The court also found the following further fact, which was assumed to have some effect on the right of the appellant to receive the amount of said bonds and interest, to wit:

Under the act of Congress approved March 3, 1865, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes for the year ending June 30, 1866," the Secretary of the Treasury paid to the Secretary of the Interior $250,000 for the purposes therein expressed, and the Secretary of the Interior expended the same for the relief of individual members of Cherokee, Creek, Choctaw, Chickasaw, Seminole, Wichita, and other affiliated tribes of Indians who had been driven from their homes and reduced to want on account of their friendship to the Government.

Finding XXXII, Record, p. 87.

The Court of Claims held that as matter of law the appellant was not entitled in this suit to recover the amount of said bonds and interest, because the acts of Congress which authorized the issue of said bonds, being the acts of March 2d, 1861, above quoted, and March 3d, 1871, (16 Stats. at Large, 570,) *were suspended* by the act of February 14th, 1873. (17 Stats. at Large, 462.) The appellant contended that the *suspension* of the authority conferred upon the Secretary of the Treasury by said acts did not

take away from the appellant the rights which it had acquired in respect to said bonds by making requisition therefor, as provided in the act of March 2d, 1861; and that by virtue of the provisions of articles X and XLV of the treaty concluded between the United States and the appellant on the 28th of April, 1866, (14 Stats. at Large, 774–779,) the *statutory right to said bonds became a treaty obligation, of which the Court of Claims had jurisdiction* under the terms of the act of March 3d, 1881.

THE CLAIM FOR THE BALANCE DUE THE APPELLANT FOR ANNUITIES, THE PAYMENT OF WHICH WAS SUSPENDED FROM JULY 1ST, 1861, TO JULY 1ST, 1866, BEING A CLAIM OUTSIDE OF THE AWARD OF THE SENATE.

The appellant also claimed the sum of fifty-nine thousand four hundred and forty-nine dollars and thirty-two cents ($59,449.32) as the balance of annuities which accrued to the appellant, and became due and payable under various treaty stipulations between July 1st, 1861, and July 1st, 1866; the amount of annuities which became due and payable was $406,284.93; that the United States had expended for and on behalf of the appellant the sum of $346,835.61, leaving a balance due the appellant amounting to the sum above stated.

Record, p. 24, par. 29.

The Court of Claims found the facts as stated in the petition and the following further fact in regard to the expenditure of the said sum of $406,284.93, to wit:

The whole of said $406,284.93 was spent by the United States under the said act of Congress for the benefit of the Choctaw and other Indian tribes, but the sum of $59,449.32 was spent for other Indians than the Choctaw.

Finding XXXIV, Record, p. 87.

The court thereupon allowed to the appellant the amount claimed in the petition.

Record, pp. 119, 120.

The only question of law which the allowance of this item of claim presents is as follows:

Can the United States claim a credit against the appellant for the payment of moneys belonging to the appellant to other Indians than the Choctaws without the sanction, approval, or assent of the appellant, even if such payment to such other Indians than the Choctaws was made under the authority of an act of Congress?

A Claim Asserted Under Treaty Stipulations, not Included in the Adjudication or Decision of the Senate.

The treaties between the United States and the appellant concluded January 20th, 1825, September 27th, 1830, and June 22d, 1855, had fixed and established the boundary-line between the Choctaw Nation and the State of Arkansas. The last of said treaties described the line thus established as follows:

Beginning at a point on the Arkansas River, one hundred paces east of old Fort Smith, where the western boundary-line of the State of Arkansas crosses said river, and running *thence due south to Red River;* thence up Red River to the point where the meridian of one hundred degrees west longitude crosses the same; thence north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning.

11 Stats. at Large, p. 611.

The appellant alleged that the United States did not survey and mark the line between the appellant and the

State of Arkansas as above described, but that in the survey and establishment of said line, under the authority of an act of Congress approved March 3d, 1875, the United States departed from the line which had been designated by said treaties; and that by means of such departure from the line which the treaties had established, there was taken from the appellant 136,204.02 acres of land, and that the appellant claimed by reason thereof the sum of $167,896.57.

Record, pp. 3, 4, par. 44.

The Court of Claims having found the facts as stated in the petition, allowed on account of this taking and appropriation by the United States of the lands belonging to the appellant the sum of $68,102.

Finding XXXI, Record, pp. 86, 94, 118, 119.

The only questions of law which this claim presents are:

1st. Is the United States liable to the appellant for taking lands which belonged to the Choctaw Nation by means of an erroneous survey of the boundary-line of said lands and the adoption of such erroneous survey by an act of Congress?

2d. What is the measure of damages by reason of such taking of said lands?

II.

Assignment of Errors.

I. The Court of Claims erred in deciding that the act of Congress approved March 3d, 1881, which authorized that court "to take jurisdiction of, and try, *all* questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon," by force of its own terms and provisions set aside the adjudication and

decision made by the Senate of the United States in favor of the appellant under and by virtue of the authority conferred by article XI of the treaty of June 22d, 1855.

Record, pp. 103, 104, 105.

II. The Court of Claims erred in deciding that the appellant, by the act of bringing its suit under the authority of said statute, waived the finality and conclusiveness of the said adjudication and decision of the Senate, and consented that the same should be set aside without the exercise of that power "TO REVIEW" which the jurisdictional act required that court to exert.

Record, pp. 104, 105.

III. The Court of Claims erred in deciding that the said adjudication and decision of the Senate should be ignored and set aside, because—

The legal rights of the parties were misapprehended by the action of the Senate, and that in the exercise of its power under the treaty of 1855 it assumed functions of policy unauthorized by the rule of law which was to govern its adjudication by the submission under that treaty.

Record, p. 104.

IV. The Court of Claims erred in treating as of no force and effect the said adjudication and decision of the Senate, having found as a fact established by the evidence that—

The consideration which was given by the Senate to the subject-matter so submitted to it by the said eleventh article of the said treaty, and to the evidence which was so presented to, and taken and considered by, the Senate, was full, fair, and impartial, and its adjudication, as made under the said article, was not influenced or affected by, and was in no way or degree the result of, any fraud, corruption, partiality, and there is no evidence tending to show that it was the result of surprise, or mistake on the part of the Senate, or of any member thereof.

Record, pp. 89, 90, 104, 105.

V. That although the act of March 3d, 1881, provided "that the Court of Claims is hereby authorized to take jurisdiction of and try ALL QUESTIONS OF DIFFERENCE arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon," and although the record shows that the fact was, and is, that the real, important, and substantial "question of difference arising out of treaty stipulations with the Choctaw Nation" was the obligation of the United States to pay the amount due to the appellant under the award and judgment of the Senate made and rendered under article XI of the treaty of 1855, because the said award and judgment was made by a special tribunal of exclusive jurisdiction, and because the decision of said tribunal was made final by the express provisions of article XII of the treaty under the authority of which it was made and rendered, yet the Court of Claims erroneously held and decided that the said act of March 3d, 1881, which so expressly required the said court "to try" and adjudicate "*all questions of difference*," nevertheless *excluded* this material and important question of difference from being tried and adjudicated by the court; and that the legal effect of the provisions of the said statute was to repeal the finality clause of article XII of the said treaty, and set aside the award and judgment of the Senate made and rendered, under the provisions of said treaty.

Record, pp. 102, 103, 104, 105.

VI. The Court of Claims erred in deciding that the losses and damages sustained by those Choctaw heads of families and their children who were entitled to reservations under article XIV of the treaty of 1830, but who were deprived of their reservations by the acts of the agents of the United States, were not proper matters for consideration by the Court of Claims in its exercise of the power conferred by the act of March 3d, 1881.

Record, pp. 109 to 115.

VII. The Court of Claims erred in deciding that the claims of reservees under article XIV of the treaty of 1830, as well as the losses and damages which said reservees sustained by being deprived of their reservations, were settled, satisfied, released, and discharged by the action of the commissioners upon their claims to reservations, as provided in the acts of Congress approved March 3d, 1837, February 22d, 1838, and August 23d, 1842, by the issuance of scrip in lieu of reservations, as provided in the third section of the act of August 23d, 1842, by the funding of one-half of said scrip, as provided in the act of March 3d, 1845, and by the payment of said funded scrip and the execution of the alleged release by the appellant, as provided in the act of July 21st, 1852; and in holding that the said release was binding and conclusive upon the appellant notwithstanding the provisions of the treaty of 1855.

Record, pp. 109 to 115.

VIII. The Court of Claims erred in deciding that the said Choctaw reservees whose reservations were lost to them by the acts of the United States, by its failure to provide for the proper execution of the provisions of article XIV of the treaty of 1830, were not in this proceeding entitled to have considered any claims for loss or damage resulting from such loss of reservations by the acts of the United States, or for loss and damage by being obliged to accept scrip in lieu of their reservations, by being *required* by the United States *to receive* one-half of said scrip in the Choctaw territory west, instead of in the State of Mississippi, because the claimants under the fourteenth article had received the money appropriated to redeem said scrip, and the appellant, in its corporate or national character, had executed the release provided in the act of July 21st, 1852, the said court having found as a fact established by the evidence that—

The claimants under the fourteenth article, the said Choctaw heads of families and their children, *were reduced*

to a helpless condition of want, which rendered it practically impossible for them to contend with the United States in their requirement that the said Choctaw heads of families should accept and receive the scrip provided to be issued to them in lieu of the reservations by the act of 1842*; and the said scrip and the money paid to redeem the same were taken and accepted because they were powerless to enforce any demands against, or impose conditions upon, the United States.*

Record, pp. 72, 109 to 115.

IX. The Court of Claims erred in deciding that the effect and force in law of the payment of the money specified in the act of Congress approved July 21st, 1852, and the execution of the alleged release required on the payment thereof, as provided in said act, were not set aside and rendered inadmissible as matters of defense by the provisions of the treaty of 1855.

Record, pp. 109 to 115.

X. The Court of Claims erred in deciding that under the authority conferred by the act of March 3d, 1881, "TO REVIEW" the entire question of differences *de novo*, it had no power or authority to review, examine, *or* consider *all* the subjects-matter of loss and damage which the appellant submitted and presented to the Senate previous to the adjudication and decision by that body of the questions submitted to it by article XI of the treaty of 1855.

Record, pp. 109 to 115.

XI. The Court of Claims erred in deciding that it was not the effect in law and fact of the provisions of said treaty of June 22d, 1855, to wholly exempt and free said Choctaws, and their children, and the appellant, from any and all binding or legal force and effect of said pretended releases, acquittances, satisfactions, and discharges, set up by the defendant, in so far as the same would in any way or degree operate, as against the appellant, to work injustice, harshness, hardship, or what is against equity; whereas in

law and fact it was and is the true effect and design of the said treaty of the 22d of June, 1855, in consideration of the grants and premises set forth in the said treaty, to secure to the said Choctaws a just, full, liberal, and complete settlement and payment of each, every, and all of the claims set forth in the petition of appellant, and to provide for a "FURTHER AND FULL SATISFACTION" of such claims.

XII. The Court of Claims erred in deciding that under the provisions of article XIX of the treaty of 1830 *fourteen hundred and thirteen persons*, who had in the year 1830 "from two to twelve acres of land in cultivation, with a dwelling-house thereon," were not entitled to the eighty acres of land reserved by said article to such persons who were Choctaw heads of families, and who had that quantity of land in cultivation, with a dwelling-house thereon, in the year 1830, because the court find, as a fact established by the evidence, that the quantity of land (458,400 acres) expressly reserved by said article XIX of said treaty for the purpose of satisfying said claims, was not all used or appropriated for the satisfaction of the reservations provided for in that article.

Record, p, 117.

XIII. The Court of Claims erred in deciding that the appellant was not entitled to recover the amount of the bonds authorized to be issued and delivered to the appellant, with the interest thereon, as provided in the acts of Congress approved March 2d, 1861, and March 3d, 1871.

Record, pp. 120, 121.

XIV. The Court of Claims erred in deciding that the appellant was not entitled to recover the arrears of interest due and payable to those claimants under article XIV of the treaty of 1830 to whom scrip was awarded, and which scrip, to the extent of one-half part thereof, amounting to

$872,000, was funded at an annual interest of five per cent. per annum, as provided in the act of Congress approved March 3d, 1845.

Record, pp. 121, 122.

XV. The Court of Claims erred in fixing the value of the reservations allowed to one hundred and ninety-one Choctaw heads of families (as per finding XIII), under article XIV of the treaty of 1830, as worth "*one dollar and eighty-five cents per acre in* 1830 *and* 1831, instead of finding or fixing the value of said reservations at the time when the said claimants became entitled, under the covenants of article XIV of the treaty of 1830, to receive from the United States "grants in *fee-simple*" for said reservations, to wit, *on the* 24*th day of February*, 1836.

Record, pp. 71, 85, 115, 116.

XVI. The Court of Claims erred in refusing to allow interest on the several amounts for which it rendered judgment in favor of the appellant from the date when said amounts severally and respectively became due and payable by the United States.

Record, p. 122.

III.

Brief.

Legal Propositions and Authorities.

A. THE ACT OF CONGRESS CONFERRING UPON THE COURT OF CLAIMS AUTHORITY "TO TAKE JURISDICTION OF AND TRY ALL QUESTIONS OF DIFFERENCE ARISING OUT OF TREATY STIPULATIONS WITH THE CHOCTAW NATION, AND TO RENDER JUDGMENT THEREON," DID NOT IN TERMS NOR BY FORCE OF ITS OWN LANGUAGE SET ASIDE THE ADJUDICATION AND DECISION OR THE AWARD AND JUDGMENT MADE AND RENDERED BY THE SENATE OF THE UNITED STATES IN FAVOR OF THE APPELLANT UNDER THE AUTHORITY CONFERRED BY ARTICLE XI OF THE TREATY OF JUNE 22D, 1855.

The act of March 3d, 1881, is "an act for the ascertainment of the amount due the Choctaw Nation," and it provides as follows:

1st. That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon.

2d. That power is hereby granted the said court TO REVIEW the entire question of differences *de novo*, AND IT SHALL NOT BE ESTOPPED BY ANY ACTION HAD OR AWARD MADE BY THE SENATE OF THE UNITED STATES, IN PURSUANCE OF THE TREATY OF EIGHTEEN HUNDRED AND FIFTY-FIVE.

Supplement to Revised Statutes, p. 608.

In considering the force and effect to be given to the language and terms of this statute, it is appropriate to consider some of the important facts which preceded the passage of this statute as they are found in the "*Findings of*

Fact," and the antecedent legislation of Congress upon this subject.

The treaty of June 22d, 1855, was the result of long and patient investigation and discussion between the United States and the appellant, which commenced on the 5th of April, 1854, and continued until the 18th of June, 1855. The negotiations which preceded that treaty were conducted on the part of the delegates representing the appellant, and the Commissioner of Indian Affairs and the Secretary of the Interior on behalf of the United States, with reference to the accomplishment of the following objects:

FIRST. That the United States should provide, *in a new treaty, for an examination and settlement of all the claims of the Choctaws, whether national or individual, under the treaty of* 1830, *as specified in their letter to the Commissioner of Indian Affairs dated April* 5, 1854.

SECOND. That the Choctaws should adjust their disputes with the Chickasaws; should lease to the United States " all that portion of their common territory between the 98th and the 100th degree of west longitude, for the permanent settlement of the Wichita and such other bands of Indians as the Government might desire to locate therein;" and should absolutely and forever quit-claim and relinquish to the United States all their right, title, and interest in and to any and all lands west of the 100th degree of west longitude.

Finding XXVIII, Record, p. 85.

The treaty which resulted from the negotiations thus conducted and carried on contained provisions in regard to the settlement of the claims for which the appellant had contended in the negotiations which preceded the treaty, to wit, those provisions which have been already quoted and are contained in articles XI and XII of the treaty concluded between the United States and the appellant on the 22d of June, 1855.

The Senate entered upon the consideration of the ques-

tions submitted for its adjudication on the 18th of March, 1856, and on the 9th of March, 1859, came to a conclusion and decision thereon, which was expressed in the resolution set out in Finding XXXVIII, which was entered of record on the Journal of the Senate, and was by the Senate declared to be its "*award and judgment* upon the questions and matters submitted for its adjudication by said article XI of the treaty of June 22d, 1855."

On the 8th of May, 1860, the Secretary of the Interior transmitted to Congress a statement of account between the United States and the appellant assumed to have been made on the "principles of settlement" fixed by the said award and judgment of the Senate. The statement of account made by the Secretary of the Interior showed a balance due to the appellant amounting to the sum of $2,981,247.30; but he suggested that the appellant might properly be charged with the sum of $530,000, which had been paid to the appellant *out of the trust funds of the Chickasaws*, as the consideration *paid by the Chickasaws* for rights and privileges granted to the Chickasaws by the appellant by the agreement of January 17th, 1837, (11 Stats. at Large, p. 573,) and the further sum of $600,000 paid by the United States to the appellant for the lands relinquished and leased to the United States by article IX of the treaty of 1855. If these two sums were to be deducted upon the principles of settlement fixed and decided by the Senate, then the balance due to the appellant under the account stated by the Secretary of the Interior was $1,851,247.30.

This suggestion by the Secretary of the Interior in regard to the propriety of the deduction of said items was the initial point of contention between the appellant and the United States in regard to the amount the appellant ought to be paid under the adjudication and decision of the Senate. It was the beginning of the discussion between the appellant and the United States which has continued from that time until now. It was the supreme "*question of dif-*

ference" from that time until the passage of the act of March 3d, 1881; and the appellant insists that *that statute* was enacted for the purpose of having a *judicial* determination of that contention. The United States did not in all these years of discussion and contention ever urge or suggest that it was not bound and concluded by the adjudication and decision of the Senate. The real and substantial question of difference was: How much or what amount shall the United States pay to the appellant in satisfaction of its obligations to the appellant under the adjudication and decision of the Senate?

On the 19th of June, 1860, the Senate Committee on Indian Affairs having had under consideration the account stated by the Secretary of the Interior, which had been transmitted to Congress on the *eighth* of May, 1860, submitted a report thereon, (Senate Report 283, first session, Thirty-sixth Congress,) in which it was declared that other and further deductions should be made from the amount found due by the Secretary of the Interior. The language of that Committee on that question was as follows:

FIRST. The five per cent. on the net proceeds of the actual sales of said lands, [5,912,661 13-100,] which the United States have paid to the State of Mississippi, amounting to $362,100.70.

SECOND. And also that the phrase "*the residue of said lands*" in the award [used instead of the words "*the lands remaining unsold*" in the submission] should not be construed to include such of the lands as have been given the State of Mississippi under the swamp-land act, nor the grants for railroad and school purposes; but that so much as in the account is allowed for such lands, at twelve and a half cents an acre, [or $286,595.75,] should also be deducted.

These two amounts deducted from the balance as found by the account, leave the sum of $2,332,560.85 due and owing to the Choctaws, according to the award of the Senate, by virtue of articles eleven and twelve of the treaty of 1855.

The magnitude of this sum, and the misconceptions that prevail in respect to the nature of the debt itself, make it proper for the Committee to remark that, in order to arrive at the foregoing result, every charge against the Choctaws and every deduction has been made that any equity would warrant; and that certainly no less sum than $2,332,560.85 would ever be adjudged by a court of justice to be due and owing upon the award of the Senate, upon the most strict rules of construction against the Choctaws; and that the amount *actually* due them for actual loss and damage sustained by the non-performance of the stipulations of the treaty of 1830, if the *actual* value at the time of all the reservations they lost was brought into account, would be found to be much larger than that sum, and probably three or four times as large.

It is thus apparent that the contention which the award and judgment of the Senate created between the appellant and the United States was not a dispute in regard to the *finality* or conclusiveness of the decision of the Senate, but in regard to the amount due to the appellant by the United States by force of the terms of that decision. If the amount which the Secretary of the Interior suggested should be deducted, and that which the Senate Committee on Indian Affairs declared should not be allowed, were taken from the balance shown to be due by the account stated by the Secretary of the Interior, there would remain due to the appellant the sum $1,202,550.85.

On the 2d of March, 1861, Congress passed an act which recognized the obligation of the United States to pay a part of the amount reported by the Secretary of the Interior as due to the appellant *under the adjudication and decision of the Senate.* The act which contained the recognition by Congress of that obligation was as follows:

For payment to the Choctaw Nation or tribe of Indians, on account of their claim under the eleventh and twelfth articles of the treaty with said Nation or tribe made the 22d of June, 1855, the sum of $500,000; $250,000 of which sum shall be paid in money, and for the residue the Sec-

retary of the Treasury shall cause to be issued to the proper authorities of the Nation or tribe, on their requisition, bonds of the United States, authorized by law at the present session of Congress; *Provided*, That in the future adjustment of the claim of the Choctaws, under the treaty aforesaid, the said sum shall be charged against the said Indians.

12 Stats. at Large, 238.

This was a payment "on account" of the amount due under the award and judgment of the Senate, because the appellant at that time asserted no claim against the United States which did not have its origin and foundation in the adjudication and decision made by the Senate under the provisions of the eleventh article of the treaty of 1855. The adjudication and decision of the Senate was thus expressly recognized, but *the amount* to be paid thereunder was left to "*future adjustment*," which was thereafter to be made in some form by the United States. This is the obvious meaning of the words "future adjustment" in the act of March 2d, 1861.

The act of Congress approved July 5th, 1862, suspended the payment of all appropriations made for the benefit of the appellant, and authorized the President to use the moneys appropriated for the benefit of the appellant in the manner provided in that act.

12 Stats. at Large, 528.

The suspension of payment thus authorized continued until the 1st of July, 1866.

12 Stats. at Large, 793.

13 Stats. at Large, pp. 180, 562.

On the 28th of April, 1866, the United States entered into a treaty with the appellant (and the Chicasaws), which provided amongst other things as follows:

ART. X. The United States reaffirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations entered into

prior to the late rebellion, and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislation from and after the close of the fiscal year ending on the 30th of June, in the year 1866.

* * * * * *

ART. XLV. All the rights, privileges, and immunities heretofore possessed by said Nations, or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and are hereby, declared to be in full force, so far as they are consistent with the provisions of this treaty.

14 Stats. at Large, pp. 774, 779.

That treaty having been ratified, the appellant again brought to the attention of Congress the matter of its claims against the United States under the award and judgment of the Senate. The first record of any action taken by that body upon the memorial of the appellant is to be found in the action taken by the Committee on Appropriations of the House of Representatives on the 27th of February, 1867, which Committee recommended an appropriation of $1,832,560.85 in money and bonds of the United States to satisfy and discharge the award and judgment of the Senate. This action was followed on the 30th of May, 1868, by the same Committee recommending an appropriation for the same sum previously recommended, for the same purpose.

The Committee on Indian Affairs of the House of Representatives, on the 6th day of July, 1868, recommended the passage of a bill providing for the payment of the same amount above stated, for the same purpose, and accompanied the bill with a report (No. 77, Fortieth Congress, second session), in which that Committee used the following language:

The Senate, on revising this statement of the Secretary of the Interior, (referring to the account stated and trans-

mitted to Congress on the 8th of May, 1860,) made a further deduction of five per cent. on the net proceeds of the actual sales of said lands (5,912,661.13 acres), which the United States had paid to Mississippi, amounting to $362,100.70, and also decided that so much of the account as is composed of 12½ cents per acre, on lands which had been given to the State of Mississippi under the swamp-land act, and for railroads and schools, should be deducted, amounting in all to $648,696.45, leaving the balance due to the Choctaws under the final award of the Senate $2,332,550.85.

It is difficult to see why under the treaty the Indians should have been charged with the 10 cents per acre on the unsold lands, amounting to $451,047.50, or with the money or lands *given away* by Congress to the State of Mississippi, amounting, as shown above, to $286,595,75, and 2,292,766 acres of land; *but as by the treaty* the award of the Senate was to be *final*, your Committee are not disposed to question it. It turns out that the Choctaws not only received nothing from the unsold lands, but, by the system of charges and deductions adopted by the Senate, they were compelled *to pay on account of such lands* the sum of $182,186.40. These facts are referred to merely for the purpose of showing that the Senate, when acting in the character of referee, did not show any favor to the Indians.

Congress by the appropriation made March 2, 1861, clearly recognized and affirmed the former award of the Senate. Deducting this appropriation, there still remains due to said Indians $1,832,560,85.

The action taken by Congress upon this report is expressed in the *fifth* section of the act of July 27th, 1868, which provided as follows:

That the Committees on Indian Affairs of the Senate and the House of Representatives shall examine the claims of the Choctaw and Chickasaw Indians for all matters of difference between them and the Government of the United States, and shall report the result of said examination to their respective houses at the next session of Congress.

15 Stats. at Large, 223.

The Senate Committee on Indian Affairs, on the 10th of April, 1869, reported that the question of the amount due the appellant, under the adjudication and decision of the Senate, was a question which properly belonged to the Judiciary Committee, and asked to be discharged from the further consideration of the subject.

Congressional Globe, April 10th, 1869, p. 718.

The Senate Committee on the Judiciary, on the 22d of June, 1870, reported a bill providing for the issue of bonds of the United States to the amount of $1,832,560.85, for the purpose of paying the amount due the appellant under the adjudication and decision of the Senate.

Congressional Globe, July 12th, 1870, pp. 54, 83, *et seq.*

The above amount was obtained by accepting the report of the Senate Committee on Indian Affairs of June 19th, 1860, as containing a correct statement of the amount due the appellant under the decision of the Senate, and deducting therefrom the sum of $500,000 appropriated by the act of March 2d, 1861.

The act of March 3d, 1871, (16 Stats. at Large, 570,) authorized the Secretary of the Treasury to issue to the appellant bonds of the United States to the amount of $250,000, *as directed* by the act of March 2d, 1861.

During all these years between the date of the last-mentioned act, and down to the date of the passage of the jurisdictional act, the appellant continued to demand and urge upon the United States its right to be paid the amount which it claimed to be due under the award and judgment of the Senate. In consequence of these constant and repeated demands of the appellant, other reports were made by the different Houses of Congress, some of which are as follows:

Senate Report No. 318, Forty-second Congress, third session, January 22, 1873, recommends the *payment of the said award with interest from the date of the award.*

Another report is House Report No. 80, Forty-second Congress, third session, February 22, 1873, *which recommends the payment of the award,* $2,332,560.85—less $250,000 already paid.

Another report is House Report No. 391, Forty-third Congress, first session, dated April 9, 1874, which recommends *the payment in bonds of said award,* after the deduction of the sum of $250,000 which had been paid under the act of 1861, to wit, the payment of $2,731,247.30, *with interest.*

Another report is House Report 599, Forty-third Congress, first session, dated May 20th, 1874, which recommends *the payment of the award,* $2,731,247.30, *with interest.*

The result of these investigations and reports was the passage of the act of the 23d of June, 1874, (18 Stats., 230,) which provided that the Secretary of the Treasury should investigate the amount due from the Choctaw Nation to the individuals of the tribe, as referred to in articles 12 and 13 of said treaty of 1855. The object of this report being declared in the act to be required—

> With a view of ascertaining what amounts, if any, should be deducted from the sum due from the United States to the Choctaw tribe, for the purpose of enabling the said tribe to pay its liabilities, and thereby to enable Congress to provide a fund to be held for educational and other purposes for said tribe, as provided for in said article 13 of the treaty aforesaid.

Under this act of Congress the Secretary (Bristow) made a report December 23, 1874, being Executive Document No. 47, Forty-third Congress, second session, the substance of which, as to the amounts due, is as follows:

The results of the inquiry directed by Congress may be briefly summarized as follows:

Amount of liabilities from the Nation to individuals, without interest	$3,216,098 00
Amount of liabilities from the Nation to individuals, with interest	5,439,551 00
Amount of "net proceeds" or "sum due," as ascertained under the award of the Senate	$2,981,247 30
Less payment on account	250,000 00
Balance of award, exclusive of interest	$2,731,247 30

In Congress, subsequently to this report of the Secretary made under said act of the 23d of June, 1874, the following reports were made:

House Report No. 499, 41st Congress, 1st session, May 15, 1876, report *conceded the binding force of the award, declared it should be paid with interest from the 2d of March*, 1861, but, owing to some difference between the two Houses, recommends its adjudication in the Court of Claims.

On the 26th of February, 1878, Report No. 251, 45th Congress, 2d session, the majority of the House Committee on Indian Affairs recommend that the question of the amount *payable under the award* be referred back to the Senate, to determine what amount *is due under the award*, and a minority of the Committee reported the bill to provide for the adjudication of the claim in the Court of Claims.

On the 18th of February, 1879, the Committee on Indian Affairs of the Senate reported by bill No. 1816, 45th Congress, 3d session, providing that the Court of Claims take jurisdiction of and determine the claims of the Choctaws against the United States under the award.

On the 16th of May, 1879, (House Report No. 4, 46th Congress, 1st session,) the Committee on Indian Affairs of the House reported the bill which became a law and is the jurisdictional act under which this suit is prosecuted.

THE LANGUAGE OF THE JURISDICTIONAL ACT MAY BE READ AND ITS PROVISIONS INTERPRETED IN THE LIGHT OF THIS ANTECEDENT HISTORY, IN ORDER THAT THE COURT MAY UNDERSTAND THE EXACT CONTENTION AND CONTROVERSY WHICH THE STATUTE INTENDED TO SETTLE.

The history of this controversy has been thus fully presented in order that we might read and interpret the language of the jurisdictional act in the light of the surrounding facts and circumstances in which that act was passed.

It is a well-settled rule in the construction of statutes that the same aids of interpretation may be resorted to as are authorized in the interpretation of the language of deeds and contracts The object in each case is to ascertain the *intention* or purpose with which the deed or contract was made or the *statute* enacted. The *language* of the deed, contract, or statute must in all cases be held to express the intention of the parties to a deed or contract, as well as of the law-making power, in a statute, if the language used is clear and free from ambiguity. If, however, the *intention* of the parties to a deed or contract, or that of the law-makers in a statute, is uncertain or doubtful, then the language used may be read in the light of those surrounding facts and circumstances in the midst of which the contract was made or the statute enacted. If the statute which is the subject of construction is *remedial* in its character, then it is permitted to read its language in the light of that controversy for the settlement of which its provisions were enacted.

In respect to those principles which relate to the interpretation of *contracts*, this court, in the case of Nash *v.* Towne, 5 Wall., 696, used the following language:

Courts, in the construction of contracts, look at the language employed, the *subject-matter, and the surrounding circumstances.* They are never to be shut out from the same lights which the parties enjoyed when the contract was

executed; and, in that view, they are entitled to place themselves in the same situation as the parties who made the contract, so as to view the circumstances as they viewed them, *and so to judge of the meaning of the words* and of the correct application of the language to the things described.

In the case of *Otis* v. *The United States*, 20 Court of Claims, 315, 327, Judge Davis, delivering the opinion of the court, deduced from the above and other decisions of this court the following propositions in relation to the rule for the interpretation of *contracts:*

When it becomes the duty of the court to ascertain the true construction which should be given to a disputed article of a contract, there are three things which ordinarily should be the subject of consideration: 1st, the circumstances known to both parties which preceded and attended the making of the contract *in the light of which it should be interpreted;* 2d, the *general purpose of the contract*, and those specific provisions which directly or indirectly bear upon and affect the provision which is the subject of controversy; 3d, the language and effect of the clause or article to which a construction must be applied.

To the same effect, also, are the following authorities:

Canal Company *v.* Hill, 15 Wall., 94–100.
Platt *v.* U. P. R'y Co., 99 U. S., 48.
Ruggles *v.* Illinois, 108 U. S., 526.

This court has very strongly declared that these principles are applicable to the construction of statutes, so far as an understanding of their intention and purpose may be derived from a consideration of the history of the times in the midst of which the act was passed, and by the light of which the reason for its passage and the meaning of its peculiar provisions are to be read.

In the case of The United States *v.* Union Pacific Railroad Company, 91 U. S., 72, 79, this court used the following language:

In construing an act of Congress we are not at liberty to recur to the views of individual members in debate,

nor to consider the motives which influenced them to vote for or against its passage. The act speaks the will of Congress, and this is to be ascertained from the language used. *But courts in construing a statute may with propriety recur to the history of the times when it was passed; and this is frequently necessary in order to ascertain the reason, as well as the meaning, of particular provisions in it.*

In that case the court permitted the provisions of the act of Congress entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," to be read in the light of the events transpiring at the time the act was passed, and by the light of these events read and interpret the obligations which the railroad company contracted and assumed with the United States under the provisions of said statute. In that case it was the public history of the times of which the court took notice in construing the statutory and contract obligations of the railroad company. The obligations of the railroad company grew out of the statute, as well as the bonds and mortgage which the company had issued to the United States under the authority of the statute; but the court held that these *contract* obligations were limited and controlled by the *statute;* and that the language of the statute might properly be read in the light of the events of the time in which the statute was passed, for the purpose of interpreting the obligations of the railroad company to the United States under its contract, as well as under the statute.

In the present case the appellant had contended with the United States for a series of years in regard to the extent of its rights under treaty stipulations It had contended—

1st. That the United States was bound by the express stipulations of the treaty of 1855 to carry into effect the

award and judgment of the Senate made under the provisions of that treaty.

2d. That the United States was bound to provide for the payment and satisfaction of the full amount due to the appellant upon the account stated, in pursuance of said award and judgment, after correcting the errors which appeared on the face of the account, as stated by the Secretary of the Interior.

3d. That the amounts recommended for deduction by the Secretary of the Interior in the account stated, and transmitted to Congress on the 8th of May, 1860, as well as those stated in the report of the Senate Committee on Indian Affairs, dated June 19th, 1860, were not authorized by the award and judgment of the Senate.

4th. That the adjudication and decision of the Senate under article XI of the treaty of 1855 was final and conclusive as against the United States independent of and without regard to the express stipulations of article XII of said treaty, which provides "THAT THE ADJUDICATION AND DECISION OF THE SENATE SHALL BE FINAL."

Congress in the acts of March 2d, 1861, July 7th, 1868, March 3d, 1871, and June 23d, 1874, had provided for a partial fulfillment of the obligations of the United States under the adjudication and decision of the Senate, and had provided for an examination of the "matters of difference" between the appellant and the United States by the Committees on Indian Affairs of the two Houses of Congress, and had also directed the Secretary of the Treasury—

To inquire into the amounts of liabilities due from the Choctaw tribe of Indians to individuals, as referred to in articles 12 and 13 of the treaty of June 22d, 1855, with a view of ascertaining what amounts, if any, should be deducted *from the sum due from the United States to said Choc-*

taw tribe, for the purpose of enabling the said tribe to pay its liabilities, and thereby to enable Congress to provide a fund to be held for educational and other purposes for said tribe, as provided for in article 13 of the treaty aforesaid.

Aside from the amount due to the appellant from the United States for annuities, the payment of which was suspended from July 1, 1861, to July 1, 1866, and the claim for lands taken from the appellant by the erroneous survey of the boundary-line between the State of Arkansas and the appellant, there was nothing claimed by the appellant except that which was due under the adjudication and decision of the Senate. It is obvious, therefore, that when Congress passed these several acts it was legislating with reference to the claims and demands which the appellant had asserted under the award and judgment of the Senate. It is clear from this legislation, as well as from what was done under it, *that the one supreme question of difference about which the legislative mind was in doubt was* THAT WHICH RELATED TO THE AMOUNT WHICH THE UNITED STATES OUGHT TO PAY TO THE APPELLANT IN ORDER TO SATISFY AND DISCHARGE ITS OBLIGATIONS UNDER THE TREATY OF 1855, as these were defined, determined, and established by the *adjudication and decision of the Senate under that treaty.* The question which was suggested in all this antecedent legislation was not one which called in question either *the conclusiveness* or the *finality* of the adjudication and decision of the Senate, for that seems to have been conceded; but the question was, How much does the United States owe the appellant under that adjudication and decision?

The act of July 7th, 1868, had reference to this one question of difference, as the reports of the committees of Congress charged with the duty of examining the subject clearly demonstrate. Those committees neither considered nor discussed any other question. The act of June 23d,

1874, directed inquiry to be made by the Secretary of the Treasury in regard to the amount which the appellant owed to its individual citizens on account of their losses for the non-performance by the United States of the stipulations of the treaty of 1830. These losses the appellant, by article XII of the treaty of 1855, had assumed and agreed to pay out of the proceeds of the award of the Senate. The object of this last act, therefore, was to enable Congress to determine what amount should be paid to the appellant, and how much should be retained for a school fund, as provided in article XIII of the treaty of 1855. The whole contention between the appellant and the United States, as these acts and the congressional history of the controversy show, had been a contention about the amount the United States was required to pay in order to discharge its obligations to the appellant under the award and judgment of the Senate.

It is permitted, therefore, to read and interpret this jurisdictional and remedial statute by the light of that controversy which had for so many years existed between the appellant and the United States. It had been from the beginning a contention and controversy in respect *to the amount due* to the appellant under the adjudication and decision of the Senate. There had not at any time nor in any place been any suggestion made or objection urged against the finality and conclusiveness of that adjudication and decision. The contention had been at all times only in regard to the amount which should be paid by the United States in order to satisfy and discharge the treaty obligation, which obligation required the payment of the amount which, on the principle established by the award of the Senate, should be due and payable to the appellant; and the dispute was never in regard to the finality of the action taken by the Senate under article XI of the treaty of 1855. Reading the language of this remedial statute by

the light of this important fact, it can be readily understood why it was entitled "*An act for the ascertainment of the amount due the Choctaw Nation.*" Its object and purpose was to enable the Court of Claims and this court, on appeal, to finally settle and determine that long-pending controversy in regard to the amount due to the appellant upon the adjudication and decision of the Senate. It authorized the Court of Claims to take jurisdiction of and *try* "ALL QUESTIONS OF DIFFERENCE *arising out of treaty stipulations.*" This necessarily required an examination of *every* question of difference which had its origin in *treaty* stipulations. The power "TO REVIEW" *de novo* was conferred with reference to that *one* question of difference which had grown out of the adjudication and decision of the Senate; and the only "*question of differences*" about which there had been contention related to the amount due under the award and judgment of the Senate; hence the jurisdictional act provided, and intended to provide, for the settlement of that disputed question.

THE LANGUAGE OF THE JURISDICTIONAL ACT DOES NOT, BY FORCE OF ITS OWN TERMS AND INDEPENDENT OF THE ACTION OF THE COURT OF CLAIMS SITTING IN REVIEW OF THE ADJUDICATION AND DECISION OF THE SENATE, SET ASIDE AND DESTROY THE AWARD OF THE SENATE.

When, therefore, we come to read the language of this act, "*for the ascertainment of the amount due the Choctaw Nation,*" we naturally examine each of its provisions, in order to ascertain if it has, by force of the language used, the effect of setting aside and putting an end to the adjudication and decision of the Senate, and thereby eliminating from the questions of which the court has jurisdiction that supreme question of difference which had grown out of, and resulted from, the stipulations contained in the *eleventh* and *twelfth* articles of the treaty of 1855.

The language of the jurisdictional act, which the Court of Claims assumes to have produced this result, is as follows: "POWER IS HEREBY GRANTED THE SAID COURT TO REVIEW THE ENTIRE QUESTION OF DIFFERENCES *de novo*."

The power "TO REVIEW" conferred upon the Court of Claims by this language cannot mean that the adjudication and decision of the Senate is thereby set aside. We are to construe these words, "power is hereby given the said court TO REVIEW the entire question of differences *de novo*," with reference to the circumstances and conditions of this controversy at the time this statute was enacted. There was no power "to review" the adjudication and decision of the Senate reserved by the treaty of 1855 either to the appellant or the United States. The adjudication and decision of the Senate was final and conclusive upon both the appellant and the United States without regard to the express stipulations of article XII of the treaty of 1855; and by the stipulations of that article, it was expressly provided "THAT THE ADJUDICATION AND DECISION OF THE SENATE SHALL BE FINAL."

The conclusiveness of the adjudication of a treaty tribunal is expressly declared by this court in *Comegys* v. *Vasse*, 1 Peters, 193, 212, in the following language:

It has been justly remarked, in the opinion of the learned judge who decided this cause in the Circuit Court, that it does not appear from the statement of facts who were the persons who presented or litigated the claim before the board of commissioners, nor whether Vasse himself was before the board, nor who were the parties to whom or for whose benefit the award was made. We do not think that the fact is material, upon the view which we take of the authority and duties of the commissioners. *The object of the treaty was to invest the commissioners with full power and authority to receive, examine, and decide upon the* AMOUNT *and* VALIDITY *of the asserted claims upon Spain for damages and injuries.* THEIR DECISION, WITHIN THE SCOPE OF THIS AUTHORITY, IS CONCLUSIVE AND FINAL. *If they pronounce the claim*

valid or invalid, if they ascertain the amount, their award in the premises is not re-examinable. The parties must abide by it as the decree of a competent tribunal of exclusive jurisdiction.

It was because there was no power "TO REVIEW" the adjudication and decision of the Senate, either in the courts or by Congress, that this authority was conferred on the Court of Claims. The power "TO REVIEW" is not, either in terms or by necessary implication, the equivalent of a declaration by Congress that "the adjudication and decision of the Senate" is hereby set aside and declared void. If the adjudication and decision of the Senate was by the force and effect of the above language completely annulled and destroyed, what need was there for making provision by which the court should be authorized "TO REVIEW;" because the exercise of the power "TO REVIEW" contemplates such an examination of the entire question of differences as would enable the Court of Claims to determine whether or not the adjudication and decision of the Senate ought, when viewed in the light of legal principles, in the exercise of the power "TO REVIEW," to be set aside and ignored as furnishing a right of action on the part of the appellant against the United States. The power "TO REVIEW" is the vesting of authority to examine again, to revise, or reconsider. It is a re-examination by the same or a different tribunal of matters which have been previously examined. The previous decision or judgment remains until it is set aside or reversed as the result of the exercise of the power "TO REVIEW." The power "TO REVIEW" does nothing more than confer authority to re-examine. It does not reverse or set aside any antecedent judicial proceeding; that result is accomplished only as the effect or conclusion of the exercise of the power "TO REVIEW." Authority "to review" a matter is the grant of judicial power, and the power must always be exercised by the pursuit of appropriate judicial methods; and the

exercise of that power necessarily implies the re-examination of a question or matter which has been previously adjudicated.

REMOVAL OF ESTOPPEL DOES NOT DESTROY THE LEGAL FORCE OF THE AWARD.

It is equally clear that the provision of the jurisdictional act which declares that the Court of Claims shall not be "*estopped*" of its power of review "*by any action had or award made by the Senate of the United States in pursuance of the treaty of eighteen hundred and fifty-five*," does not by force of its own terms set aside and annul the adjudication and decision of the Senate in favor of the appellant. This language adds nothing to the force of that provision which confers the power "*to review.*" The grant of power to the Court of Claims "*to review* the question of differences *de novo*" carried with it the power to re-examine the adjudication and decision which the Senate had made under the treaty of 1855; and for the purposes of that review the estoppel, which resulted from the finality and conclusiveness of that adjudication and decision, was necessarily removed. The grant of authority "TO REVIEW," by force of the terms in which the power was conferred, removed the estoppel from that which was to become the subject of review. It is obvious, therefore, that the *language* of that provision of the statute by which the power of review was conferred upon the Court of Claims is not sufficient to warrant the assumption that it did in terms, or by the natural and ordinary meaning of its language, set aside and destroy the adjudication and decision of the Senate in favor of the appellant under the treaty of 1855. The *language* of the provision conferring the power "TO REVIEW" does not by force of its own terms effect that result, when standing by itself; but when this language is construed in connection with the ample provisions of the first clause

of the statute, it is impossible to find in it any provision which in terms, or by reasonable intendment, sets aside the adjudication and decision of the Senate, unless that result should be accomplished in consequence of the exercise of that judicial power "*to review*" which the jurisdictional act conferred on the Court of Claims. There is, however, another and equally conclusive reason why the power granted to the Court of Claims "*to review the entire* QUESTION OF DIFFERENCES *de novo*" should not be held or construed to set aside the adjudication and decision of the Senate, or the award which resulted from that adjudication and decision. That reason is to be found in the consequences which would necessarily follow such a construction. Such a construction would completely destroy and render without force that provision of this statute which authorized the Court of Claims "TO TAKE JURISDICTION OF AND TRY ALL QUESTIONS OF DIFFERENCE ARISING OUT OF TREATY STIPULATIONS WITH THE CHOCTAW NATION, AND TO RENDER JUDGMENT THEREON."

It is not permitted in the construction of a statute to ignore any of its provisions. *Some* effect must be given to each of its mandates and requirements unless they are impossible of execution or enforcement. When this statute was enacted, the one supreme question of difference, as we have seen, between the appellant and the United States was in regard to the obligation of the United States to pay the amount due under an adjudication and decision of the Senate, to which, under the stipulations of the treaty of 1855, the appellant and the United States had submitted some of their questions of difference. It had been agreed in article XI of that treaty as follows:

ARTICLE XI. The Government of the United States not being prepared to assent to the claim set up under the treaty of September 27th, 1830, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good

conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and *liberal* consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the land ceded by them to the United States by the treaty of September 27th, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that a final settlement with them may be promptly effected; or,

Secondly. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much.

The tribunal thus created had, after more than three years of examination and deliberation, decided the questions submitted to it by the treaty by the adoption of the following resolution, to wit:

Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the 1st day of January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of one dollar and twenty-five cents per acre; and, further, that they be also allowed twelve and a half cents per acre for the residue of said lands.

And the said resolution, thus adopted on the said 9th day of March, 1859, was, by the Senate, declared to be its AWARD AND JUDGMENT upon the questions and matters submitted to it for adjudication by the eleventh article of the treaty of June 22, 1855.

Finding XXXVIII, Record, p. 90.

The amount due to the appellant, under and by virtue of said "AWARD AND JUDGMENT," was ascertained and re-

ported to Congress on the 8th day of May, 1860. The appellant, under that "AWARD AND JUDGMENT," became entitled to receive from the United States the amount which was found to be due from the United States, according to the principles above stated in the award or decision of the Senate, and the jurisdictional act required the Court of Claims to ascertain and determine how much was due and payable in its adjudication of the "questions of difference," in respect of which it was, under that act, "to render judgment."

It is neither susceptible of dispute, nor is it disputed, that when the jurisdictional act of 3d of March, 1881, was enacted, and when it explicitly required that the court should "take jurisdiction of and try all questions of difference arising out of treaty stipulations," the great and all-embracing "question of difference" pressed upon the Government was this, namely, that the Government was bound to stand by and enforce the award of the Senate as valid and final; that it had not done this, and was in default; that the amount due on the principles of the award ought to be promptly ascertained and paid, and that this was a treaty stipulation, final, conclusive, and binding. To say, therefore, that this supreme question of the binding force of the award was not submitted to the court at all, but that the court was to treat this "question of difference" as settled by the absolute repeal of the award, by the provisions of the second clause of the jurisdictional act, is to defy and trample upon the express mandate of the statute, as found in its most material enacting provision.

That the appellant's contention, as pressed on the Government at the date of this act of 1881, that the Senate's award was valid, was final, and one which ought to be executed, was a question growing out of a treaty stipulation, is not capable of dispute.

See Great Western Ins. Co. *v.* United States, 112 U. S., 193–197.

Alling *v.* United States, 114 U. S. R., 562.

The Court of Claims, therefore, by the mandate of this jurisdictional act, was required to try and to render judgment upon this momentous question of difference. It was commanded to examine into all the facts, circumstances, and acts from which this "award and judgment," thus made and rendered, had come to exist. It was to examine and decide upon the validity of this award by appropriate judicial methods. It was to pronounce its judgment upon the validity of this "award and judgment" aided by the lights of the law. The command to "take jurisdiction of," and "to try, and to render judgment" upon, "all questions of difference arising out of treaty stipulations," is so clear and emphatic that there is no escape from the discharge of that duty unless that mandate of the statute has been restrained by conferring upon the Court of Claims the power which is conferred by the second clause of the first section of the statute. The words of the second clause are not in any respect words of limitation or restraint. Power "to review the entire question of differences *de novo*" is in no sense a restriction upon the right and authority of the Court of Claims "*to take jurisdiction of and try all questions of difference arising out of treaty stipulations, and to render judgment thereon.*"

The effect of the construction which the Court of Claims put upon this statute is to make the power conferred by the second clause of the act a limitation or a restraint upon the power conferred by the first clause. The words of the second clause are words of amplification and enlargement, and not of limitation. It conferred upon the Court of Claims a power which otherwise it would have had no authority to exert. If the power conferred by the second clause had been omitted, the "award and judgment" of the Senate would have been absolutely final and conclusive, because no right "*to review*" the award and judgment of this treaty tribunal—this court of exclusive juris-

diction—had been anywhere reserved or conferred upon any other tribunal.

We have indicated, and will hereinafter further indicate, that this statute cannot be construed as designed to deprive the court of all jurisdiction to try that supreme "question of difference arising out of treaty stipulations," to wit, the right of appellant to demand that the Senate award shall stand and be executed; that so to construe this statute is absolutely to defy the express and unambiguous words of the statute commanding the court "to take jurisdiction of and try *all* questions of difference;" that the court must allow to stand and to be operative *every* provision and word of this statute where that is possible; that the second clause of this jurisdictional statute, and which relates to the power to review *de novo*, is not a limitation upon the first clause, but is an amplification or enlargement of the jurisdiction conferred by such first clause. We here state, as the result of what has already been urged, very explicitly and carefully, and desire, if possible, to fix upon the attention of the court what the appellant insists is the plain sense of this entire jurisdictional provision, taken as a whole.

Stating this, in its broad and entire scope, we submit that the effect of the jurisdictional section is to grant to the court the power to try "*all* questions of difference" relating to each, any, and every right being asserted by the Choctaws at the date of the act, and which grew out of treaty stipulations. It—the jurisdictional provision as a whole—did not mean to arbitrarily repudiate or deprive the Nation of any treaty right, or of the right of *trial* as to any such alleged treaty right. This is absolutely self-evident.

But Congress meant, furthermore, that, in that trial, the Government should not be deprived of any defense arising upon the merits of the controversy which is known to our laws. It did not design to allow either party to be

deprived of anything which the general principles of the law, or of equity, would suffer to be interposed to defeat any such alleged treaty right.

The second clause of this jurisdictional provision is plainly designed to have the very usual, proper, and simple effect of saying that the court might "review" the question of the alleged validity of the Senate award, and the alleged obligation of the Government to execute the same as a finality. It meant to direct that the court might make this review, but, of course, make it subject to, and governed by, the principles of law and justice—might go, *de novo*, to the absolute and ultimate merits of the entire case for the purpose of seeing whether there was in the case that which, on the principles of law and equity, ought to, and would, overthrow the award and annul that treaty provision which makes the award of the Senate final, and which would deprive the appellant of the benefit of that finality clause of article XII of the treaty.

This second clause is a provision which secures the Government against such estoppels in making its defense as are worked by a judgment or decree, or an award where the power of the court to set aside the judgment, or the decree, or award, on motion for a new trial, or on motion in arrest of judgment, or on a writ of error, or on appeal, or on a bill of review, or on a bill to set aside a judgment, decree, or award for alleged fraud, gross mistake, or flagrant partiality, have passed away from the court, and from the parties litigant.

This second clause secures the Government, as against the award, in the right to have a review such as is had under these well-known methods of correcting errors and avoiding injustice, by means of the several and respective methods of reviewing judicial determinations, and which methods are so familiar to the law. This, we submit, is the natural, obvious, and single design of this jurisdictional provision, taken as a whole. It is an interpretation of

such provision which makes harmonious, and leaves operative, every part and word of the provision. It gives to each part a simple, usual, and natural operation, and one in manifest accord with obvious and natural justice. It is an interpretation which secures to the defendant, upon the ultimate merits of the matter, every possible defense to which the Government would or could be entitled, as against the award, under any system of law known to civilized governments. It is the only interpretation which does not involve unwarranted and flagrant repudiation of explicit treaty rights, as secured by said finality clause, and is the only interpretation of the act of which it can, with truth, be said that it is honest.

We, therefore, concede that, under this second clause, reserving the "power to review," &c., the Court of Claims *was empowered* to try the question as to the binding force of the award, and that, in trying this question, it had power to review all facts and questions *de novo*. But in making this review, and in determining the finality and validity of the award, the court did *not* become a lawless body, or "a law unto itself." On the contrary, this question of the continuing and binding force of the award was to be tried "*according to law*." This is so manifest as to render its enforcement by argument needless and its elucidation impossible. How the court disregarded the law by ignoring and disregarding the award will be elsewhere considered.

The construction which the Court of Claims put upon the second clause of the statute makes it a limitation upon, and a practical repeal of, the first clause, because the court declares that the legal effect of the second clause is to set aside, and destroy, and put out of consideration, the "award and judgment" made and rendered by the Senate in pursuance of the stipulations of the treaty of 1855. The construction which that court put upon the second clause is inadmissible, for the following reasons:

FIRST. Because it converts the enlarged powers conferred by the second clause into a *proviso*, which limits and restricts the authority conferred by the first clause, and thereby deprives the court of all power to examine, to try, and to render judgment upon that most important question of difference which grew out of the stipulations and covenants of the treaty of 1855, to wit, was, and is, the award valid and binding?

That construction, even if the second clause of the jurisdictional act was in terms a *proviso*, or a limitation upon the power conferred by the first clause, is in violation of that long-established and familiar rule of construction which declares that the words of a *proviso* shall never be so interpreted or construed as to limit or destroy the plain intention and purpose of the enacting clause.

In the case of The United States *v.* Dickson, 15 Peters, 141, 165, this court has very strongly and clearly declared the rule of interpretation which is always to be applied to exceptions or *provisos*, which are alleged to be limitations upon the general terms of an enacting clause.

In that case this court, on page 165, used the following language:

> Passing from these considerations to another, which necessarily brings under review the second point of objection to the charge of the court below, we are led to the general rule of law which has always prevailed, *and become consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly, and takes no case out of the enacting clause which does not fall fairly within its terms.* In short, a proviso carves special exceptions only out of the enacting clause, and those who set up any such exceptions *must establish it as being within the words as well as within the reason thereof.*

In the case of Savings Bank *v.* United States, 19 Wall., 227, 236, this court again declared "that a construction of

a proviso in an act which makes the proviso plainly repugnant to the body of the act, is inadmissible." To the same effect, also, is the case of Ryan *et al. v.* Carter *et al.*, 93 U. S. R., 83.

SECOND. The construction which the Court of Claims put upon the second clause of this statute makes it destroy the broad and comprehensive mandate of the first clause, and denies to that court all power to try the "question of difference" as to the validity of the award (as asserted by appellant) when tested by those legal principles upon which must depend its ultimate force and binding effect. That construction renders inoperative the first clause of the statute, because it eliminates from any discussion or consideration the rights of the appellant, as well as the obligations of the United States under the treaty of 1855, to abide by and faithfully execute the provisions of the eleventh and twelfth articles thereof. That construction violates that canon of interpretation which requires effect to be given to *all* the provisions of a statute, unless there is such repugnancy or conflict between the different provisions that they cannot stand together, and effect be given to all.

United States *v.* Bassett, 2 Story R., 389.
Ogden *v.* Strong, 2 Paine R., 584.
Beals *v.* Hale, 4 Howard, 37.
Rice *v.* R. R. Co., 1 Black., 378.
1 Kent's Com., 462.

THIRD. The construction which the Court of Claims adopted makes the jurisdictional act repeal articles XI and XII of the treaty of 1855, wherein the principles for the settlement of the "*rights and claims*" of the appellant against the United States are agreed upon and expressed, and the finality and conclusiveness of "the award and judgment" of the Senate are expressly declared. A con-

struction which effects that result will not be adopted if the power "*to review de novo*" can be exercised, and yet the provisions of those articles of that treaty remain unimpaired. The power "*to review de novo*," contemplated by the second clause of the first section of the statute, *can* be exercised without impairing any of the provisions of the treaty of 1855. The *finality* of "the award and judgment" of the Senate, as declared in article XII of that treaty, was not repealed by the jurisdictional act, which conferred the power "to review." This construction would permit a repeal by implication where there is no conflict or repugnancy, and this is never permitted in the construction of statutes. This court has repeatedly declared the rule of law upon this subject as follows:

There must be *a positive repugnance* between the provisions of the new law and those of the old; and even then, the old law is repealed *by implication* only *pro tanto*, to the extent of the repugnancy.

There must be *such a positive repugnance between the two statutes that they cannot stand together.*

Wood *v.* United States, 16 Peters, 342, 363.
United States *v.* Walker, 22 How., 311.
McCool *v.* Smith, 1 Black., 459.
United States *v.* Tynan, 11 Wall., 8.
Fabbri *v.* Murphy, 95 U. S. R., 196.
Authur *v.* Homer, 96 *Ibid.*, 140.
State *v.* Stoll, 17 Wall., 425, 430.

That this statute should not be so construed as to impair rights secured by treaty, or to violate the plighted faith of the Government, this court declared in the case of CHEW HEONG *v.* UNITED STATES, 112 U. S. R., 536, 549, where the following language was used:

For, since the purpose avowed in the act was to faithfully execute the treaty, *any interpretation of its provisions*

would be rejected which imputed to Congress an intention to disregard the plighted faith of the Government, and, consequently, the court ought, if possible, to adopt that construction which recognized and saved rights secured by the treaty. The utmost that could be said, in the case supposed, would be, *that there was an apparent conflict between the mere words of the statute and the treaty, and that, by implication,* the latter, (*i. e.*, THE TREATY), so far as the people and the courts of this country were concerned, was abrogated. * * * But, even in the case of *statutes*, whose repeal or modification involves no question of good faith with the Government or people of other countries, the rule is well-settled that repeals by implication are not favored, and are never admitted where the former can stand with the new act.

This language is exceedingly appropriate to the present discussion, because the construction which the Court of Claims put upon this remedial statute, enacted for the purpose of ascertaining the amount due the Choctaw Nation, and directing that court to try *all* questions of difference arising out of treaty stipulations with the appellant, repeals treaty stipulations and destroys rights secured by treaty.

FOURTH. The construction which the Court of Claims put upon this statute is, moreover, an attempt to destroy vested rights. This "award and judgment" which the appellant had secured under the treaty of 1855 was so far a right of property as to be beyond the reach of the legislative power. It was strictly a right of property growing out of treaty stipulations, and as such it could not rightfully be taken away except by the consent of the appellant. This much the Court of Claims conceded in its opinion on the demurrer of the United States to so much of the appellant's petition as declared upon the "award and judgment" of the Senate, as a distinctive cause of action, for the court there said:

By agreement of the parties contained in the treaty this adjudication and decision was made *final*, and so was and

is conclusive, unless the finality and conclusiveness have been set aside by the concurrence of both parties, since neither party alone could disturb it.

Record, p. 36.

To arbitrarily deprive the appellant of the fruits of this "award and judgment," thus secured under the agreements and covenants of a solemn treaty, is so obviously wrong and unjust as to be repulsive to every impulse and sentiment of justice, *even where the rights of civilized Indians are involved.* It is not permitted to so construe the terms and provisions of a statute as that injustice and wrong shall be inflicted by means of the construction of its general provisions.

This proposition was declared in the case of United States *v.* Kirby, 7 Wall, 482, 486, where this court used the following language:

All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislation intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.

See same thing in—

Chew Heong *v.* The United States, 112 U. S. R., 555.
Oates *v.* National Bank, 100 U. S. R., 244.

FIFTH. Another and more important objection to such a construction of the jurisdictional act as is given to it by the Court of Claims is, that it makes the second clause of that act a provision which prescribes to that court, and to this court, what effect shall be given to the award and judgment of the Senate, *and directs that it shall have no effect,* and that suing under the act shall be held by the court to be *a waiver* of all rights under the award. Such a construction would render that clause of the jurisdictional

statute unconstitutional and void, for the reason, that, where an act of Congress grants authority to a court, to exercise *strictly judicial powers*, as these are defined by this court, and to render a common-law judgment, there it is incompetent for Congress to assume *judicial powers*, by undertaking to prescribe, in the act, what effect the court shall give to any instrument of evidence, which the general principles of law make competent evidence, in proving the issue so authorized to be tried. It follows, therefore, in such cases, where strictly judicial trials are authorized, that *Congress cannot prescribe to the court* that it shall give no force or effect to a Presidential pardon; (13 Wall., 128;) no force to a designated promissory note; no force to a named judgment; no force to a named treaty, or to a designated award. It is obvious, therefore, that if the jurisdictional act, was a statute designing to say, in the first instance, that the court should have power "*to try all questions of difference and to render judgment thereon*," and then to add that, in reaching that judgment, the court should give no force to a named award, made final by treaty, and which, but for the statute, would be competent evidence as a valid judgment at common law, then such a provision would be palpably unconstitutional. And yet such result is the logical consequence of adopting the construction which the Court of Claims put upon the jurisdictional act.

SIXTH. In stating the proposition which has just been submitted, it is important to understand its exact purpose and extent. It is not intended by what has just been asserted to deny that Congress may establish "special tribunals or courts," with special powers "to examine testimony, and decide, in the first instance, upon the validity and justice of any claim for money against the United States." Nor is it denied that in making such a submission to such "special tribunal" Congress may attach to the submission any terms and conditions it may please as

conditions precedent to a finding, by the special tribunal, against the United States. But what we do contend and assert is, that neither the jurisdictional act in this case, nor the trial and judgment which it authorizes, nor the ultimate tribunal selected by the act, is of this "special" character described in Gordon *v.* United States, 117 U. S. R., 699. On the contrary, the ultimate tribunal here selected *is this court.* The act tolerates no judgment against the United States, except such as results from the exercise, by the Court of Claims and this court, of "strictly judicial" powers; and it is also obvious that, on the hearing of the appeal, which the statute requires to be taken from any judgment which that court might render, in the exercise of its judicial powers, this court cannot act otherwise than judicially.

The jurisdictional act does not suffer the tribunal to stop with a mere auditing report, but, on the contrary, is mandatory in requiring that, touching *all* the questions submitted, the court shall "*render judgment thereon.*" This court can render no judgment except a "*strictly judicial*" judgment. Hence it is unmistakably fixed in the very letter of this jurisdictional act that it permits no auditing proceeding, but commands a "strictly judicial" trial. The provision for appeal to this court is not permissive or directory, but is mandatory, and is of the essence of the act, and not severable, so as to permit the residue of the act to stand and be enforced with this provision omitted.

Hence, since this is the nature of this jurisdictional act, commanding and suffering nothing less than *a purely judicial trial and judgment*, and since it commands that certain named issues or "questions of difference" shall be tried, and that on these issues the jugment shall be, if against the United States, the judgment of no other tribunal than this court, the question arises, Is it competent for Congress to prescribe to this court a condition or rule or law in which Congress shall say to this court, "You shall try

judicially said designated issues, but shall give no force to a certain instrument or transaction, which you can see, and do see, is a competent and material and necessary instrument of evidence in the trial and conducting of such purely judicial trial, and in reaching such judgment so ordered by the act—can Congress say to this court that you shall give no effect to the judgment of the Senate in making such strctly *judicial trial*, although this court shall be of opinion that no right judgment can be reached by this court in such trial without giving to such award the force which is given to it in such trial by "the law of the land?"

Our proposition is that Congress can issue to this Court no such mandate; nor can it issue such mandate to the Court of Claims, where that court is directed to exercise such "strictly judicial" functions as are required by the mandate of the jurisdictional act.

SEVENTH. If the construction which the Court of Claims put upon this statute is sustained, and no other interpretation can be given to it, or is possible, then it necessarily results that the statute sets aside and destroys, by force of its own terms, a final judgment or award, without the intervention of any judicial proceedings or any judicial action. The accomplishment of such a result by the exercise of legislative power is not permitted where the powers of the Legislative and Judicial Departments of the Government are limited to the appropriate powers conferred upon and reserved to each. To set aside or reverse a judgment or an award is a judicial act, and involves the exercise of judicial power. This court will hesitate to impute to Congress either the purpose or the desire to exercise judicial powers or to perform judicial acts, and yet that result is inevitable if the construction which the Court of Claims put upon the language which conferred the "power to review the entire question of differences *de novo*" shall be sustained by this court. Authorities which deny such a

power to the Legislative Branch of the Government are numerous and without conflict. The following cases illustrate the unyielding force with which these principles have been affirmed:

In Dorsey *v.* Dorsey, 37 Maryland R., 64, the court said:

> It is not competent by legislation to authorize the court of final resort to reopen and rehear cases previously decided.

Again, the same class of authorities declare that "the legislature may control remedies, but when the matter *has proceeded to judgment* it has passed beyond legislative control."

Lewis *v.* Webb, 3 Maine, 326.
Griffin's Ex'r *v.* Cunningham, 20 Gratt., 31.
Teel *v.* Yancy, 23 Gratt., 690.
Hooker *v.* Hooker, 18 Miss., 599.

An examination of the authorities upon this question induces that learned and distinguished jurist, Judge Cooley, to state the following proposition as the established law upon this question. That author, at pages 114 and 115 of the fifth edition of that work, states the conclusion to be derived from a consideration of all the authorities as follows:

> As the legislature cannot set aside the construction of the law already applied by the courts to actual cases, neither can it compel the courts for the future to adopt a particular construction of a law which the law permits to remain in force. * * * If the legislature would prescribe a different rule for the future from that which the courts enforce, it must be done by statute, *and cannot be done by mandate to the courts*, which leaves the law unchanged, but seeks to compel the courts to construe and apply it, not according to the *judicial*, but according to the *legislative*, judgment. *If the legislature cannot thus indirectly control the action of the courts, by requiring of them a construc-*

tion of the law according to its own views, it is very plain it cannot do so directly, by setting aside their judgments, compelling them to grant new trials, or directing what particular steps shall be taken in the progress of a judicial inquiry.

This court, in the case of United States *v.* Klein, 13 Wall., 128, had occasion to deal with an act of Congress which attempted to limit and control this court in its exercise of the appellate power which had been conferred by general laws in regard to appeals from the Court of Claims. The act attempted to reverse the decisions of this court, previously announced, *as to the legal effect of a pardon granted by the President*, and directed this court to make a pardon evidence of guilt, and to create a disability, instead of making the pardon to effect a restoration of rights, as this court had previously declared was the legal result of a pardon in respect to the matter stated in the statute under consideration. This court, in denying to Congress the power to pass such a statute, used the following language:

The Court of Claims is thus constituted one of those inferior courts which Congress authorizes, and has jurisdiction of contracts between the Government and the citizen, from which an appeal regularly lies to this court. Undoubtedly the legislature has complete control over the organization and existence of that court, and may confer or withhold the right of appeal from its decisions. And if this act did nothing more, it would be our duty to give it effect. If it simply denied the right of appeal in a particular class of cases, there could be no doubt that it must be regarded as an exercise of the power of Congress "to make such exceptions from the appellate jurisdiction as should seem to it expedient."

But the language of the proviso shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. Its great and controlling purpose is to deny to pardons granted by the President the effect which this court had adjudged them to have. The proviso declares that pardons shall not be considered by this court on appeal. We had already decided that it was our

duty to consider them and give them effect, in cases like the present, as equivalent to proof of loyalty. It provides that whenever it shall appear that any judgment of the Court of Claims shall have been founded on such pardons, without other proof of loyalty, the Supreme Court shall have no further jurisdiction of the case and shall dismiss the same for want of jurisdiction. The proviso further declares that every pardon granted to any suitor in the Court of Claims, and reciting that the person pardoned has been guilty of any act of rebellion or disloyalty, shall, if accepted in writing, without disclaimer of the fact recited, be taken as conclusive evidence in that court, and on appeal of the act recited; and, on proof of pardon or acceptance summarily made on motion or otherwise, the jurisdiction of the court shall cease, and the suit shall be forthwith dismissed.

It is evident, from this statement, that the denial of jurisdiction to this court, as well as to the Court of Claims, is founded solely on the application of a rule of decision, in causes pending, prescribed by Congress. The court has jurisdiction of the cause to a given point; but when it ascertains that a certain state of things exists, its jurisdiction is to cease, and it is required to dismiss the cause for want of jurisdiction.

It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power.

The court is required to ascertain the existence of certain facts, and thereupon to declare that its jurisdiction on appeal has ceased, by dismissing the bill. What is this but to prescribe a rule for the decision of a cause in a particular way? In the case before us, the Court of Claims has rendered judgment for the claimant, and an appeal has been taken to this court. We are directed to dismiss the appeal if we find that the judgment must be affirmed, because of a pardon granted to the intestate of the claimants. Can we do so without allowing one party to the controversy to decide in its own favor? Can we do so without allowing that the legislature may prescribe rules of decision to the Judicial Department of the Government in cases pending before it? We think not.

* * * * * * * *

We must think that Congress has inadvertently passed

the limit which separates the legislative from the judicial power.

It is of vital importance that these powers be kept distinct. The Constitution provides that the judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as the Congress shall from time to time ordain and establish. The same instrument, in the last clause of the same article, provides that in all cases other than those of original jurisdiction "the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

Congress has already provided that the Supreme Court shall have jurisdiction of the judgments of the Court of Claims on appeal. Can it prescribe a rule in conformity with which the court must deny to itself the jurisdiction thus conferred, because, and only because, its decision, in accordance with settled law, must be adverse to the Government and favorable to the suitor? This question seems to us to answer itself.

13 Wall., pp. 145, 146, 147.

Mr. Justice Miller, who delivered a dissenting opinion upon another point, expressed his concurrence in these views in the following language:

I cannot agree to the opinion of the court just delivered in an important matter; and I regret this the more because *I do agree to the proposition that the proviso to the act of July* 12, 1870, *is unconstitutional, so far as it attempts to prescribe to the judiciary the effect to be given to an act of pardon or amnesty by the President.* This power of pardon is confided to the President by the Constitution, and whatever may be its extent or its limits, the Legislative Branch of the Government cannot impair its force or effect in a judicial proceeding in a constitutional court.

13 Wall., p. 148.

EIGHTH. The construction which the Court of Claims put upon this statute when it declares that it sets aside and destroys the award and judgment of the Senate, is an in-

terpretation which results in flagrant, palpable, and undisguised repudiation, by the United States, of its treaty obligations. This court has never, in all the years of its existence, when brought face to face with questions of repudiation of contract obligations—whether such repudiation was attempted by States, counties, or municipalities—failed to stamp such attempts with the stigma of its denunciation and abhorrence.

In speaking of such repudiation, *by the United States*, of its obligations under contracts, this court, through its present chief justice, uses, in denunciation of such repudiation, these words:

> If they [the United States] repudiate their obligations, it is as much repudiation, with all the wrong and reproach that that term implies, as it would be if the repudiator had been a State or a municipality or a citizen.
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> United States *v.* Union Pacific R. R. Co., 99 U. S. R., 719.

The appellant disclaims any purpose to impute to Congress the design, by its passage of the act under consideration, to invade the domain of the judicial power or to overstep the limits which the Constitution has wisely established to separate the legislative from the judicial power. This result is accomplished, if it is accomplished, not by the terms of the jurisdictional act, but by the *construction* which the Court of Claims has put upon the language of that act. The appellant contends that the power granted to the Court of Claims "*to review the entire* QUESTION *of differences de novo*" does not abolish and annul the award of the Senate, unless as the result of the exercise of the judicial power granted to the Court of Claims "to review," while the Court of Claims makes the terms of the second clause of the act accomplish this result without the exercise of judicial power. The distinction is obvious and radical.

The result of all this discussion must be a practical demonstration of the absolute unsoundness of the construction which the Court of Claims put upon that language of the statute, which conferred upon it the power "*to review* the entire question of differences *de novo*." The following are some of the consequences which result from an adoption of that construction which the Court of Claims has given to this statute:

1st. It makes the *second* clause of the statute, by *implication*, repeal the *first*, because it declares that it had no power to try or to even notice that supreme "question of *difference*" as to the finality of the award and the amount due thereon, which grew out of the treaty of 1855, and found expression in the "award and judgment" of the Senate made and rendered in pursuance of that treaty.

2d. It accomplishes this result by that construction which declares that the *second clause*, by the inherent force of its own language, closed the eyes of that court to any examination or consideration of that all-embracing question of difference which related to the validity and finality of the "award and judgment" of the Senate, when tested by the requirements of the treaty of 1855, or by those legal principles by which the validity of an award or judgment is always to be determined.

3d. It makes the *second clause* repeal the twelfth article of the treaty, which declares that "the adjudication and decision of the Senate shall be *final*."

4th. It makes the *second clause* invade, divest, and strike down vested rights if the award was valid.

5th. It makes the *second clause* break down and crush out all that is included in that principle of law which declares that *all parts of a statute* shall have their full force if possible.

6th. It makes the *second clause* a *proviso*, instead of a statute conferring enlarged power, and, having thus changed it, overthrows that maxim which this court and all courts have recognized in the declaration of the principle *that a proviso* or limiting clause shall NEVER BE ALLOWED to cut down or restrict the broadness of an enacting clause if the two *can* stand together.

7th. It makes the *second clause* override that proposition of law which is as old, as fixed, and as sacred as any of the principles of the common law, which declares that *repeals by implication* are not favored, and are never to be allowed when it is possible to avoid them.

8th. It converts the *second clause* into a provision which invades the domain of the judicial power by making it set aside and destroy an award or judgment of *a tribunal of exclusive jurisdiction*, without the intervention of any judicial proceedings, and in contempt of those principles of law by which the awards and judgments of such tribunals are always protected and sustained.

9th. It makes the *second clause* a provision which denies to the courts—in the exercise of their judicial power "*to try and to render judgment*"—the right to consider and act upon, in that "strictly judicial" trial which the jurisdictional act requires, that which, by the accepted rules of law, is everywhere, and in all judicial proceedings where the common or civil law is recognized, made evidence.

This court will not adopt such a construction of this beneficial and remedial statute as involves these consequences if it can be avoided; *and it can be avoided* by giving effect to the whole statute, instead of a part of it, and by declaring that the award and judgment of the Senate *must stand, unless it shall perish as a result of the exercise of the judicial power "to review."*

B. THE ACT OF INSTITUTING ITS SUIT BY THE APPELLANT UNDER THE AUTHORITY OF THE JURISDICTIONAL STATUTE DID NOT ENLARGE OR ADD FORCE TO THE TERMS OR PROVISIONS OF THAT ACT, NOR OPERATE AS A WAIVER BY THE APPELLANT OF THE FINALITY AND CONCLUSIVENESS OF THE AWARD AND JUDGMENT OF THE SENATE, NOR DID SUCH ACT ACCOMPLISH THE DESTRUCTION OF SAID AWARD AND JUDGMENT, UNLESS THAT RESULT WAS ACCOMPLISHED BY THE PROVISIONS OF THE JURISDICTIONAL ACT.

It has been shown quite conclusively, as we believe, that the award and judgment of the Senate, made final and conclusive by treaty stipulations, was not set aside by the language of the jurisdictionel act; and that it could not be rejected by the court as evidence, nor put out of consideration as one of the questions of difference which the court was required *to try*, and upon which it was to render judgment, nor be destroyed by the court as establishing in the appellant a right of action, unless that destruction was accomplished by finding in that award and judgment such infirmity of fact, or of law, as would justify the court in setting it aside as the result of the exercise of the power "TO REVIEW."

The Court of Claims, however, assumes that *the effect in law* of the act of the appellant in "*coming into court, submitting to its jurisdiction, and filing a petition*," was an assent by the appellant to all the terms of the jurisdictional act; and that the adjudication and decision of the Senate was, *therefore*, (*by reason of such acts*,) not to be considered as final and conclusive on the trial of this cause. Stated in another form, the legal proposition which the court asserted was, that if the statute by force of its own terms had not set aside and destroyed the adjudication and decision of the Senate, the appellant, *by accepting the right to bring its suit*

against the United States under the authority of this statute, had set aside the award and judgment of the Senate, and rendered such award and judgment of no force or effect as a distinctive cause of action in the present proceeding; and that this was accomplished by the act of the appellant in "coming into court," rather than as the result of the exercise by the court of the power "*to review* the entire question of differences *de novo*."

The language of the Court of Claims, in its two opinions, justifies the above statement of the legal proposition asserted by that court. In its decision of the demurrer to that part of the appellant's petition which asserted a right of action under the award and judgment of the Senate, that court used the following language, which is also adopted in the final decision of the case, to wit:

> By agreement of the parties contained in the treaty this adjudication and decision was made final, and so was and is conclusive, unless the finality and conclusiveness have been set aside by the concurrence of both parties, since neither party alone could disturb it.
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> In our opinion, that has been done for the purposes of the present case. On one side Congress, representing the United States, passed the act of March 3, 1881, giving this court jurisdiction to try all questions of difference arising out of treaty stipulations with the Choctaw Nation. * * * On the other side, *the claimant, by coming into court, submitting to its jurisdiction thus conferred, and filing a petition, has assented to the terms of the act thoughout. The adjudication and decision of the Senate is, therefore, by the subsequent acts and agreements of the parties, not to be taken as final and conclusive in the trial of this case.*
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> Record, p. 103.

In the opinion of the court, delivered when final judgment was rendered, the following language was used:

> It is not necessary to discuss and determine the legal effect of the adjudication of the Senate in the abstract.

The fact that the petitioner comes into this court affects its claim under the award with all the provisions of the act of the 3d of March, 1881, without which it would have no standing in court; and as to our powers and authority, said act is the paramount law of this case.

It is true that the treaty of 1855, by the twelfth article, provides "it being expressly understood that the adjudication and decision of the Senate shall be final;" *but the act of* 1881, *which the claimants have acknowledged by bringing this suit*, provides in effect that the decision of the Senate may be disregarded by this court, and all questions of differences arising out of the treaty stipulations may be inquired into *de novo*.

By the act of the claimant in coming into this jurisdiction under the law of 1881, *the finality of the award under the treaty of* 1855 *became subordinated to the jurisdiction of this court, and opened the field of controversy anterior to the action of the Senate.*

Record, pp. 104, 105.

It is obvious that the terms of the jurisdictional act can be neither enlarged nor limited by the act, or fact, that the appellant instituted its suit under the authority which it conferred. To concede that effect to such an act would be to make the statute speak otherwise than by its own language. It would be conceding the right to find the true interpretation of a statute in the acts of one of the parties named in and who acquired rights under it, rather than in the statute itself. It would be an admission which would justify the destruction of that maxim of interpretation which declares that "the intention of the law-maker is to be deduced from the whole and every part of a statute taken and compared together."

The appellant has never denied or questioned the right of the Court of Claims "to try *all* questions of difference arising out of treaty stipulations" with the appellant, "and to render judgment thereon," or "to *review* the entire question of differences *de novo*." The contention of the appellant is, and has always been, that the

Court of Claims must interpret this statute by its own language; must try *all* questions of difference arising out of treaty stipulations, and not *one* or a part of such question; must exercise the power "*to review*" by the pursuit of appropriate judicial methods; that it must give force and effect to the award and judgment of the Senate, unless it should find, either on the face of that award and judgment, or in the facts out of which it came, such legal infirmities as would destroy it when examined and judged by the light of those unalterable principles of law by which its validity and conclusiveness must be tested and determined.

This jurisdictional act is a *public*, and not a private, statute, and no limitations or waivers are to be inferred by the act of the appellant in accepting its terms. The "*coming into court*" and "*submitting to its jurisdiction*," on the part of the appellant, did not set aside the adjudication and decision of the Senate, unless the language of the statute by force of its own terms effected that result, without any action under the statute, on the part of the appellant.

It might with equal propriety be claimed that any act of Congress which created and conferred jurisdiction upon "such inferior courts" as Congress by the Constitution is authorized "to ordain and establish" should be construed to authorize such inferior courts in the exercise of their judicial functions to depart from and ignore those fixed and unalterable principles of law by which judicial tribunals are guided and controlled, by the fact of the citizen coming into such courts and submitting to their jurisdiction, as to urge that the appellant waived its right to have a *judicial determination* of *all* its questions of difference which grew out of treaty stipulations with the United States. It is true the appellant filed its petition in the Court of Claims, and submitted to its jurisdiction, under the authority of this jurisdictional statute, but it went into that court for the purpose of having a *judicial*, rather than a *legislative* or a political, determination of its rights.

This statute has none of the features or elements of an "agreement." It did not require the appellant to *waive* or surrender any legal rights as a *condition precedent* to the exercise by the court of the jurisdiction which the statute conferred. It did not provide, as it might, if such had been the intention of Congress, "that the Court of Claims is hereby authorized to take jurisdiction of and try *all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon: Provided*, That the said Nation shall, in its petition to said court, waive and relinquish all its rights under the adjudication and decision made by the Senate of the United States in favor of the appellants, in pursuance of the treaty of 1855." Such a provision would have required on the part of the appellant affirmative action, as a condition precedent to the enjoyment of the rights which the statute conferred. The statute demanded of the appellant the performance of no condition; it required from the appellant nothing more than other suitors in that court were and are required to do in order to secure a judicial determination of their rights. It simply provided, in its *second* section, as follows:

> Such action shall be commenced by a petition stating the facts on which said Nation claims to recover, and the amount of its claim; and said petition may be verified by either of the authorized delegates of said Nation as to the existence of such facts, and no other statements need be contained in said petition or verification.

When Congress enacted this statute it was not engaged in a controversy with the appellant in regard to the *terms* upon which the Court of Claims should be invested with jurisdiction to hear and determine these questions of difference arising out of treaty stipulations. It was not making propositions to the appellant to relinquish or waive any of its treaty rights in consideration of the enlargement of the jurisdiction of the Court of Claims, so that it might take

jurisdiction of these disputed questions which had their origin in treaty stipulations. The enactment of this statute and the arrangement of its terms were in no sense "a game of give and take" between the United States and the appellant. The effect of the act of the appellant in "coming into court" under the terms of this jurisdictional statute is construed by the Court of Claims to preclude and estop the appellant from asserting any rights against the United States under the treaty of 1855, or under the award of the Senate, which had been made in conformity with the provisions of that treaty. The only claim which the appellant asserted under the treaty of 1855 was the award and judgment of the Senate, which resulted from an adjudication and decision of that body under the stipulations of that treaty; and the Court of Claims makes the "*fact*" that the appellant "comes into this court," (in the Court of Claims), "submitting to its jurisdiction," "and filing a petition," work such an estoppel as precludes the appellant from having any benefit or advantage in these proceedings from the adjudication and decision made by the Senate under the treaty of 1855.

It is nowhere declared as a legal proposition that an *estoppel* of the right to have a suit determined by the application to it of admitted legal principles results from the mere act or fact of the institution of a suit in a tribunal having exclusive jurisdiction of the subject-matter and of the parties. The exercise of the right of election in respect to the resort to a remedy does not work an estoppel in respect to the legal principles to be applied to the enforcement of the remedy selected. The doctrine of election is based upon the theory that the law does not permit a party to a suit to occupy inconsistent positions, and that, having selected his remedy, he is precluded from pursuing any other. The estoppel which results from the exercise of the right of election in respect to suits presupposes the existence

of different remedies for the enforcement of a right. If there is but *one* remedy, there can be no election, and the pursuit of the only remedy available to a suitor is not such an act as will constitute *a waiver of the right to have the contention or suit determined by the application to it of those legal principles by which courts are always supposed to be guided and controlled in their judicial action.* It has never yet been decided in any reported case that *the mere act of bringing a suit under a statute which authorized it* was *a waiver* of the right of the plaintiff to have his case tried and determined by the usual methods of procedure, and by the application to it of those legal principles which are everywhere recognized as properly applicable to its determination.

A WAIVER is very concisely defined to be—

The relinquishment of a known right; and there must be both knowledge of the existence of the right and an intention to relinquish it.

Bigelow on Estoppel, 506.

The only language that can be found in the jurisdictional act which can be construed into the expression of an *intention* by the appellant to waive its rights under the adjudication and decision of the Senate is that which conferred the power "TO REVIEW" the entire question of differences *de novo;*" and that concession, even if the appellant assented to it, by the mere fact of the institution of its suit, comes far short of a consent by the appellant that the Court of Claims in its exercise of the power "TO REVIEW" should ignore and depart from fixed and unalterable legal principles, in order to set aside and destroy the adjudication of the Senate as well as the award which resulted therefrom.

The *contracting* power of the Government is not vested in Congress; the treaty-making power is not vested in that branch of the Government. The *laws* which it enacts in the exercise of its *legislative* power are not *contracts* unless they clearly express that purpose in their provisions;

and even when they are in effect *contracts*, they are none the less *statutes*, and are to be interpreted by those rules which have been wisely established for their construction.

It is obvious, therefore, that it was a grave error of construction for the Court of Claims to so construe the jurisdictional act as to alter or enlarge its terms by the act of the appellant "coming into that court" and "submitting to its jurisdiction." That court declares that "therefore," by reason of these acts, the award and judgment of the Senate are not to be taken as final and conclusive, nor as of any force or effect in the suit which the appellant instituted under the authority of the jurisdictional act. The appellant has not heretofore made, nor will it *here* make, any contention which denies to the Court of Claims the power "TO REVIEW" "all questions of difference arising out of treaty stipulations" with the appellant. Its contention here is the same that it was in the Court of Claims. It there contended, and here contends, that if the award and judgment of the Senate is to be destroyed, is to be shut out from this discussion, is to be ignored as a "question of difference" arising out of treaty stipulations, it must be in consequence of the existence of some legal infirmity in that award or judgment, which shall be revealed as the result of the exercise of that power "TO REVIEW" which the statute conferred upon that court, rather than because the appellant submitted these treaty contentions to the Court of Claims in the manner provided in the jurisdictional act.

C. EVEN IF THE SENATE, IN ITS AWARD AND JUDGMENT, DID "MISAPPREHEND THE RIGHTS OF THE PARTIES," AND DID, "IN THE EXERCISE OF ITS POWER UNDER THE TREATY OF 1855, ASSUME FUNCTIONS OF POLICY UNAUTHORIZED BY THE RULE OF LAW WHICH WAS TO GOVERN ITS ADJUDICATION, BY THE SUBMISSION UNDER THAT TREATY," STILL THE ADJUDICATION AND DECISION OF THE SENATE, AND THE AWARD WHICH RESULTED FROM THAT ADJUDICATION AND DECISION, WAS NOT VOID, AND OUGHT NOT TO HAVE BEEN IGNORED AND PUT OUT OF CONSIDERATION, FOR THAT REASON, BY THE COURT OF CLAIMS, IN THE RENDITION OF ITS JUDGMENT HEREIN.

The Court of Claims gives its reasons for refusing to recognize the award and judgment of the Senate as of any force or effect in this suit in the following language found in its opinion, to wit:

At page 103 of the Record the court used the following language:

The effect of the act of 1881 was to remove from the jurisdiction and consideration of this court, as toward the adjudication of the Senate, the technical law of estoppel, and yet to preserve within the jurisdiction, the decision of the Senate, to be considered by the court as it might determine.

At page 104 of the Record the court said:

"Either party may put in evidence that adjudication, and if not controverted it may present the principles, as far as it goes, upon which our final decision will rest; but if controverted we shall consider whatever facts and arguments may be offered in relation thereto."

There is no claim upon the part of the Government that the Senate made a mistake in fact, on the theory which is assumed; nor is it pretended that any motive other than the highest consideration of justice actuated that distinguished body in arriving at the conclusion it did, as shown

by the findings; but that the legal right of the parties were misapprehended by the action of the Senate, and that in the exercise of its power under the treaty of 1855 it assumed functions of policy unauthorized by the rule of law which was to govern its adjudication by the submission under that treaty.

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No effort was made to attack the award upon any other ground than that it applied principles of political policy rather than rules of judicial justice in the decision of the controversy as required by the nature and character of the submission.

Again, at page 105 of the Record, the court used the following language:

In view of the language of the act of 1881, in defining the powers of this court with reference to the action of the Senate, the most that can be said in favor of the award is that it may be considered by the court subject to such objections to it as may arise either from the *facts* found by the court *or the law of the case*, and that such facts and law are not affected to the prejudice of the defendants by the award.

It is insisted by counsel for the claimant that the decision of the Senate cannot be disregarded by the court unless "it is proved to have been the offspring of fraud, corruption, or flagrant partiality;" and many authorities, both of cases and distinguished authors, are cited in support of that proposition. We have not found any of the facts cited in the position of counsel against the award of the Senate; *and in the absence of the peculiar provisions of the act of our jurisdiction we would yield the most cordial assent to the soundness of the proposition asserted by counsel.*

The propositions asserted in this language are as follows:

1st. That the provisions of the jurisdictional act destroyed and removed the adjudication and decision of the Senate, as well as the award and judgment which resulted from that adjudication and decision, from the consideration of the court on the trial of this cause.

2d. That the Senate, in its adjudication and decision of the questions submitted to it by article XI of the treaty of 1855, committed an error in law.

The *first* of these objections has already been sufficiently answered. The sufficiency of the second objection will be here considered.

If the Senate did "*misapprehend*" "the rights of the parties," that did not authorize that court to declare the award void nor permit the court to refuse to recognize its validity as the award and judgment of a special tribunal of exclusive jurisdiction. If the award or decision made by the Senate was within its jurisdiction, or was covered by the terms of the submission, or by the fair intendment of those terms, then *no error of law*, which the Senate may have committed in reaching its conclusion or its award and judgment *on the matters submitted*, would justify any reviewing tribunal in setting it aside either in a direct or collateral proceeding. This court has settled this question so thoroughly that it needs no discussion here.

In the case of Burchell *v.* Marsh, 17 How., 344, this court, discussing this question, used the following language:

Arbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. As a mode of settling disputes, it should receive every encouragement from courts of equity. *If the award is within the submission, and contains the honest decision of the arbitrators, after full and fair hearing of the parties, a court of equity will not set it aside for error, either in law or fact.* A contrary course would be a substitution of the judgment of the chancellor in place of the judges chosen by the parties, and would make an award the commencement, not the end, of litigation. "*In order*," *says Lord Thurlow*, (*Knox* v. *Symmonds*, 1 *Ves. Jr.*, 369,) "*to induce the court to interfere, there must be something more than an error of judgment, such as corruption in the arbitrator, or gross mistake, either apparent on the face of the award, or to be made out by evidence; but in case of mistake, it must be*

made out, to the satisfaction of the arbitrator, and that if it had not happened, he should have made a different award.''

In the case of The York and Cumberland R. R. Co. *v.* Myers, 18 How., 246, 253, the question arose as to whether an award made by an arbitrator, under an agreement to submit a case to arbitration which was pending in court, was valid and binding on the party against whom it was made. It was objected that the arbitrator had included in his award matters which were not included in the submission. The court held, however, that inasmuch as the matters objected to were included in the declaration of the plaintiff filed in the case in the court where the suit was pending, they were, therefore, within the submission which had submitted the whole case to the decision of the arbitrator. In passing upon this question the court said:

We have extracted the averments in the declaration that were designed to charge the corporation with the nonperformance of the covenants, for the payment for work done before the dismissal of the contractor. * * * It was the duty of the arbitrator to ascertain the truth of these charges. They were the precise subject of the reference. *The arbitrator has explained with clearness in his testimony* his conclusion on the subject of this stock, that the contractor had no title to the shares; that is, that he had not been paid by the appropriation of so much reserved stock for his use. *This conclusion of his is a final decision on the question*, FOR THIS COURT CANNOT REVISE HIS MISTAKES, EITHER OF LAW OR OF FACT, IF SUCH HAD BEEN ESTABLISHED.

In the case of Burchell *v.* Marsh, above cited, the court considered the significance to be given to the word "*mistake*," when used in reference to *awards;* and the following significant admonition is given to all courts which should be required in the discharge of judicial functions to pass upon the validity of awards. This court upon that subject said:

Courts should be careful to avoid a wrong use of the word "mistake," and, by making it synonymous with mere

error of judgment, assume to themselves an arbitrary power over awards. The same result would follow if the court should treat the arbitrators as guilty of corrupt partiality, merely because their award is not such an one as the chancellor would have given. We are all too prone, perhaps, to impute either weakness of intellect or corrupt motives to those who differ with us in opinion.

In the case of Mickles *v.* Thayer *et al.*, 96 Mass., 114, the agreement of submission provided that certain matters in dispute should be submitted to referees "to settle and determine," and the agreement of submission provided that "the award of such referees, or a major part of them," when made, shall be final and conclusive between the parties. The referees were to determine all questions according to the rules of law and equity, the same as though the matter was to be tried in a court of law or equity. The court there held, as stated in the syllabus—

That in the absence of fraud, corruption, or mistake *apparent upon the face of the award*, the decision of the referees *was final upon the questions of law*, as well as the questions of fact, involved in the case.

The principal question in that case was whether the words of submission, which required the arbitrators "*to determine all questions according to the rules of law and equity, the same as though the matter was to be tried in a court of law or equity*," should be construed as a *limitation* upon the power of the arbitrators, or only in general terms directory.

It was contended there, that the decision of the referees as to what was "*according to the rules of law and equity*," was subject to review by the tribunal to which the award was returned as well as by the appellate tribunal, and that such tribunals had the right to review the decision of the arbitrators for the purpose of determining whether the arbitrators had or had not determined the questions submitted according to the rules of law and equity. The

court, however, without dissent, held that *it could not review the decision of the arbitrators*, when honestly and fairly made within the submission, even if the arbitrators had erred in their decision, and had not in fact determined the questions submitted according to the rules of law and equity.

To the same effect, and deciding substantially the same questions, are the following authorities:

Fairchild *v.* Adams, 11 Cush., 594.
Bigelow *v.* Newell, 10 Pick., 348.

These authorities are sufficient to demonstrate the proposition for which we are here contending, and fully justify the assertions that even if the Senate, in its decision of the questions submitted, did "*misapprehend the right of the parties*," or did "*assume functions of policy unauthorized by the rule of law which was to govern its adjudication*," the Court of Claims was not, for these reasons, authorized to ignore and hold of no force or effect in these proceedings, the award and judgment made and rendered by the Senate under the treaty of 1855. This conclusion is inevitable, if the principles of these authorities shall be applied to the language and reasoning of the Court of Claims upon this question.

The contention of the appellant, on the contrary, is that, THE SENATE NEITHER MISAPPREHENDED THE RIGHTS OF THE PARTIES, NOR "ASSUMED FUNCTIONS OF POLITICAL POLICY UNAUTHORIZED BY THE RULE OF LAW WHICH WAS TO GOVERN ITS ADJUDICATION BY THE SUBMISSION" UNDER THE TREATY OF 1855.

The rights of the appellant, under the award and judgment of the Senate, resulted from the stipulations of article XI of that treaty. That article recites that the Government of the United States not being prepared to assent to the claim set up and so earnestly contended for by the Choctaws "*as a rule of settlement;*" that it justly appre-

ciates the sacrifices, faithful services, and general good conduct of the Choctaw people; that it desires that their RIGHTS and CLAIMS against the United States shall receive a JUST, FAIR, AND LIBERAL CONSIDERATION; and, in order to secure this result—

It is therefore stipulated that the following questions be submitted *for adjudication* to the Senate of the United States:

FIRST. Whether the Choctaws are entitled to, OR SHALL BE ALLOWED, the proceeds of the sale of the lands ceded by them to the United States, by the treaty of September twenty-seventh, eighteen hundred and thirty, deducting therefrom *the cost of their survey and sale and all just and proper expenditures and payments under the provisions of said treaty;* and, if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that A FINAL SETTLEMENT with them may be promptly effected; Or,

SECONDLY. Whether the Choctaws shall be allowed a gross sum IN FURTHER AND FULL SATISFACTION of all their claims, national and individual, against the United States; and, if so, how much.

This treaty submitted for the consideration of the Senate *three distinct questions*. It is obvious that the decision of them by the Senate would have been a complete discharge of the duty which the treaty had imposed upon that body.

1st. The Senate might have decided that the appellant was "*entitled to*" the "net proceeds" of the lands ceded by it to the United States by the treaty of 1830.

2d. It might have decided (as it did) that the appellant "SHALL BE ALLOWED" such proceeds, upon *equitable considerations*, in order to fulfill that agreement of the treaty which stipulated that the RIGHTS AND CLAIMS of the appellant should receive "A JUST, FAIR, AND LIBERAL CONSIDERATION."

3d. It might have decided, under the authority conferred, that the appellant SHOULD BE ALLOWED A GROSS SUM, IN FURTHER AND FULL SATISFACTION OF ALL ITS CLAIMS AGAINST THE UNITED STATES, both national and individual, *and it might have fixed the amount of such gross sum.* The Senate had the option to select either of these three modes of settlement, because each of them had the express sanction of the treaty. The *treaty* was the agreement, as well as the *law*, by which the powers and duties of this treaty tribunal —this court of exclusive jurisdiction—were to be measured and determined. If, therefore, the treaty tribunal was justified by the language and purposes of the treaty, as well as by the objects of the arbitration, in making the decision which became its award and judgment in respect to the matters submitted to it, then that award cannot be overthrown, because it was beyond the terms of the submission, or was in excess of the power conferred upon the Senate. The power of the Senate, so far as the extent and scope of its jurisdiction was concerned, was *unlimited* in respect to the means it should adopt in the determination of either of the questions thus submitted for its decision.

The functions of the Senate, as the tribunal provided by the treaty, were completely discharged, and the duty imposed appropriately performed, whenever it answered by its judgment the questions submitted to it. In order to determine the validity of the award or decision of a special tribunal, such as that which was created by this treaty, we examine—

1st. The treaty which contains the terms in which the authority to adjudicate was conferred.

2d. The action taken by the treaty tribunal upon the subject committed to its jurisdiction for adjudication.

The provisions of the treaty, and the power conferred by its provisions, have already been examined. It is only

necessary to consider what was done by this treaty tribunal, in order to determine if its acts were authorized and its decision within the authority conferred by the submission. The Senate, acting under the power conferred by the *second* question submitted FOR ADJUDICATION, decided that the appellant "BE ALLOWED" the proceeds of the sale of the lands ceded by the Choctaw Nation to the United States by the treaty of September 27, 1830; and, in order to express in apt words the result of its adjudication, the Senate adopted, and caused to be entered of record, a resolution in the words and figures following, to wit:

> *Resolved*, That the Choctaws *be allowed the proceeds of the sale of such lands as have been sold by the United States on the 1st day of January last*, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of $1.25 per acre; and, further, that they be also allowed twelve and a half cents per acre for the residue of said lands.

This resolution left nothing uncertain or doubtful. It answered the question in the exact language in which it was propounded to the Senate. It "ALLOWED" the appellant the proceeds of the sales of the ceded lands which had been sold prior to the 1st of January, 1859. It directed the deduction of the costs of survey and sale and all just and proper expenditures and payments under the treaty of 1830. It excluded the reservations which the Choctaws had been allowed and had secured under that treaty. It charged the appellant with the *scrip* which individual Choctaws had received in lieu of reservations at the rate of one dollar and twenty-five cents per acre, although the findings of fact (No. XXX, Record, p. 85) show that said scrip issued in lieu of reservations did not exceed in value *twenty-one and one-half cents per acre*. It fixed the price which the United States should allow "*for the lands re-*

maining unsold." It is thus apparent that the adjudication and decision of the Senate was within the terms of the submission, and fully answered all the demands and requirements of the treaty. It left nothing undetermined, and its determination of all the questions submitted was full and complete. Such an award, made by such a tribunal, must be sustained and recognized *by every other judicial tribunal*, unless it has inherent in it, or incident to it, such infirmity, either in law or fact, as will justify its impeachment.

The Court of Claims justifies the destruction of the award of the Senate because, in the exercise of the power "TO REVIEW *de novo*," it assumes that *the Senate erred in matters of law.* In other words, that the rights of the parties were misapprehended by the Senate in allowing *political* considerations to have operation.

Before examining the position as to considerations of political policy having been allowed to influence the award, it is obviously proper here to premise that even if that were so, (which it is not,) and so appeared by the record, yet that fact would give no shadow of right to the court to set aside the award for that reason.

There is no evidence in the record, no finding of fact by the Court of Claims, which shows that the Senate was actuated or controlled in its decision by considerations of "*political policy*," unless it is to be found in the report made by the Senate Committee on Indian Affairs previous to the making of the award by the Senate. That report was submitted *to the Senate* on the 15th of February, 1859.

It was the reasoning upon which, it may be assumed, the special tribunal reached its conclusions upon the questions which it decided. It revealed the considerations by which the tribunal was influenced in its decision; it opens up and exposes to view the real motives by which the Senate was actuated in its decision. If its decision was influenced by considerations of political policy, we shall be very

apt to find that fact stated in that report. If, on the contrary, the decision of the Senate was the result of a consideration of the legal as well as equitable rights of the parties, we shall be quite as likely to find that reason stated in this report. If the award and judgment of the Senate was the result of obedience to, and in recognition of, the desire of the United States to be "JUST, FAIR, AND LIBERAL," we shall also be instructed by this report as to the meaning which the Senate puts upon those significant words. We therefore proceed to an examination of this report with some degree of solicitude, because the Court of Claims has said that the award and judgment of this treaty tribunal had its origin and vitality in the assumption by the Senate of "FUNCTIONS OF POLICY UNAUTHORIZED BY THE RULE OF LAW WHICH WAS TO GOVERN ITS ADJUDICATION BY THE SUBMISSION UNDER THAT TREATY."

THE REPORT OF THE SENATE COMMITTEE ON THE QUESTIONS SUBMITTED TO THE SENATE BY THE TREATY.

This report takes up and considers in the order here stated the following questions:

1st. The question as to whether the appellant "*was entitled to*" the net proceeds of the sales of the lands ceded by it to the United States by the treaty of 1830.

2d. Whether the appellant should be allowed a gross sum "IN FURTHER AND FULL SATISFACTION" of its claims, both national and individual, against the United States; and if so, how much.

The *first* question, after an elaborate discussion of the different legal propositions urged on behalf of the appellant, was decided as follows:

But, upon the question whether the Choctaws are, upon the face of the treaty, *entitled* to the net proceeds of their lands, the committee still cannot find in the treaty itself

sufficient warrant so to hold. The argument and the facts satisfy them that it *ought* to have been so, but not that it *is* so. Such is not, in their opinion, the legal construction of the treaty, though the equity of such a construction cannot be altogether denied; and to go behind the treaty itself and to seek for its true interpretation, contrary to its letter and legal effect, in the declarations of the commissioners, not inserted in the instrument itself, would be to establish what would certainly prove to be a very mischievous and dangerous precedent, and unsettle many treaties.

It is, therefore, the opinion of the committee that the judgment of the Senate on the first branch of the first question should be that the Choctaws are not entitled in law and in strict right to the net proceeds of the lands ceded by the treaty of 1830.

This construction of the provisions of the treaty of 1830, so far as its *terms* secured to the appellant the *right* to the proceeds of the sales of the ceded lands, was concurred in by the Court of Claims in the following language:

In the exercise of the most liberal rules of construction and interpretation, we can find no authority in any article of the treaty of 1830 for giving to the claimants the net proceeds of the land ceded to the United States by that treaty; and while such a right, in all fairness, might have been provided for, we can recognize only those actually secured by the provisions of the treaty.

Record, p. 109.

The report of the Senate Committee next considered the *second* question submitted for decision, and in entering upon the discussion of that question the Senate Committee used the following language:

Passing now to the second question—whether the Choctaws shall be allowed a gross sum, and if so, how much—we find on examination that the most considerable among the items presented by the Choctaws as properly constituting such gross sum have their origin in the fourteenth article of the treaty of 1830.

The Senate report then proceeds to consider the character and extent of the *fourteenth*-article claims as they existed under the treaty of 1830, and the subsequent acts of the United States done in fulfillment of the stipulations and covenants of that article. It is conceded in the report of the Senate Committee, as it is conceded by the Court of Claims, that under the provisions of that article of the treaty *every Choctaw* who was the head of a family at the date of the treaty had an absolute right to select for himself and family a reservation, as provided in said article, and to be protected in his right to such reservation by the United States. It discusses the rights of these claimants from a strictly legal stand-point, as the report clearly shows. It stated the facts substantially as the Court of Claims has stated them in its 2d, 3d, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 20th, and 21st findings of fact. The Senate Committee, speaking on behalf of the Senate, conceded the following as being rights secured to the Choctaws by article XIV of the treaty of 1830:

1st. That *every* head of a family in the tribe had the absolute right to remain and become a citizen of the United States, and retain for himself or herself, and for each of his or her children, a very large share, in the aggregate, of the common lands, "by signifying his intention" to remain and become a citizen "to the agent within six months from the ratification of the treaty." There was no other condition precedent; and if the persons so remaining resided on their lands, intending to become citizens of the States, for five years after such ratification, then they were to receive grants in *fee-simple*.

The fourteenth article affirmed the right of every Choctaw head of a family in the tribe to remain and become a citizen of the United States. They had but "to signify their intention" to do so to the agent within six months. The *mode* of such notification was not prescribed; of course no special, technical form of giving it was required. When it was given, each such head of a family became entitled to

a reservation of 640 acres of land for himself, 320 for each unmarried child over ten years of age, and 160 for each under ten living with him or her.

Every one that so remained, though in law and fact a joint owner of *all* the lands east and west of the Mississippi, lost thereby all interest in the lands west, unless he or she afterwards removed west, and received no part whatever of the *price* of the unreserved lands east; and even if he or she afterwards removed, no part of the national annuities. If one so remaining got no *reservation*, he got *nothing at all* for his interest in the lands.

Such being the case, as *every* one had the right to remain, and as those remaining received no compensation for their interest in the lands, if by any means they failed in securing reservations, it followed that the United States could not attempt to force them to remove, *so as to confiscate to their own use the reservations by such removal forfeited;* they could not interpose any difficulties in the way of their notifying their intention to remain, nor prescribe any onerous mode of doing so, nor require any particular formality unlikely to be easily complied with; and most certainly could not endeavor, by any law or Executive regulation, to add to or alter those provisions of the treaty made for their benefit.

For it must be admitted, as the Choctaws urge, that as the United States, having by the treaty taken the possible chance that *all* might remain and claim reservations, were to be profited by the value of every reservation of which the Choctaws could be deprived, they could not use any unfair means, as by imposing unauthorized conditions, or even by failing to protect the reservees against violence on the part of individuals, and over-zeal on the part of agents of the Government to effect their removal, and the consequent loss of their reservations, any more than they could be astute in discovering devices by which to avoid securing reservations to those who did really remain.

If *all* the Choctaws had taken reservations and remained, there would have been no expenditures for removal, subsistence, annuities, &c.; and the quantity of land included in all the reservations would have been, from all that can be learned of the number of the Choctaws at the time, about 7,250,000 acres. Their lands were in all but

7,796,000 acres; thus leaving, for the interest of those who had previously removed, only about 546,000 acres.

It being presumable, however, that many would remove, the nineteenth article made provision for remunerating them for or securing to them the value of their improvements, by agreeing to give 1,600 heads of families, if necessary, and so many should remove, reservations amounting in the aggregate to 458,400 acres, to include their improvements, which they might sell, or the Government would pay them therefor, when they reached their new homes, at the price of fifty cents per acre.

There can be no doubt that, when the treaty was ratified, a large portion, probably more than half, certainly more than a third, of the tribe intended to remain. The agents of the Government, however, deemed it their duty to discourage that intention, and effect, if possible, the removal of the whole. It appears that in one locality some five or six thousand persons intended to form a sort of colony, but that the plan was abandoned in consequence of the threats of the Government officers and emigrating agents, who caused nearly every family embraced in the scheme to emigrate "through fear of personal violence." Not more than fifteen or twenty of these persons remained long enough to receive grants in *fee-simple*.

It appears, however, that a very large number of others did remain a sufficient length of time. In 1844 the Government agent, Governor McRae, of Mississippi, reported that 7,000 Choctaws were still in the ceded country. Out of nearly 1,600 families embraced in this number, only sixty-nine were reported by the Government agent as entitled to land. Ultimately seventy-four more families succeeded in securing reservations. The others, constituting more than nine-tenths of those who remained, failed to obtain any land at all. They made repeated applications for relief. In 1836 their claims were carefully investigated by a committee of the House of Representatives. The report of the chairman, the Hon. John Bell, clearly explains the whole subject. The difficulty arose in part from the violent means used to coerce emigration, but chiefly from the refusal of the agent to permit the Indians to signify their intention to remain. The treaty was ratified on the 24th of February, 1831, and no instructions were sent to the agent to receive the Indians' notices of

intention to remain until May; and he then refused to receive nearly all of them—*two hundred* at one time. Their rights were consequently not recognized at the land offices, and their lands were sold by the Government. An act providing for a commission to examine their claims was passed on the 3d of March, 1837, but expired by its own limitation before the commissioners had investigated one-fourth of the claims presented. Another act for the same purpose was passed in August, 1842. Under the authority given by these two acts, and others of a supplementary character, the claims of over 1,500 families were adjudicated. Only 143 secured their proper locations; 1,150 others were ascertained to be entitled, as having in all respects and in due time complied with the treaty requisites; but, in the meanwhile, their improvements having been disposed of, Congress directed scrip to be issued, authorizing them to enter other lands in exchange for the tracts reserved by the treaty.

The nature of this scrip, the mode of its issue, and the facts connected with its delivery, all have a material bearing on the principal item constituting the gross sum claimed by the Choctaws.

The third section of the act of 23d of August, 1842, provides that where it is made to appear clearly that the claimant is entitled to a reservation under the fourteenth article of the treaty of 1830, a patent shall be issued for the land, unless it has been previously disposed of by the United States; in which case an equal quantity shall be allowed elsewhere out of any public land "subject to entry at private sale," in Mississippi, Louisiana, Alabama, or Arkansas, "and certificates to that effect shall be delivered under the direction of the Secretary of War, through such agent as he may select, not more than one-half of which shall be delivered to said Indian until after his removal to the Choctaw territory west of the Mississippi."

Nothing is said about a removal west in connection with the delivery of the other half of the certificates, and no allusion is made at all to the removal of those Choctaws who secured the locations reserved for them by the treaty.

The Secretary of War, however, made the emigration of the claimants a condition precedent to the delivery of any part of the certificates. At first he simply required evidence that the Indian was about to start. Afterwards he prohibited the de-

livery until after the arrival of the claimant in the Choctaw country west.

Certificates for 700,080 acres were delivered to the claimants, for which it is alleged that they realized but $118,400, an average of less than 17 cents an acre, instead of $875,100, the par value at $1.25.

The other half, which by the act of 1842 was not to be delivered until after the removal of the Indians west, was not delivered at all. On the 3d of March, 1845, Congress directed that it should not be issued, but should carry an interest of five per cent., regarding the land as principal at $1.25 per acre. The amount thus funded was afterwards paid over to the claimants in bulk, under an act passed July 21, 1852.

The Choctaws, in their various communications, complain of having been treated with great injustice in this matter.

They allege that the treaty secured, and could not have been made without securing, to those who remained in the ceded territory the right, not merely to stay, but to stay in their own homes, to cultivate their own fields, to do as they pleased with their own property, and to become citizens of the United States; that the treaty stipulation for this purpose was deliberately nullified by the Government agents; that their reservations were not recognized at the land offices; that they were deprived of their lands and driven out of their houses; that more than ten years elapsed before they received any indemnity whatever; that when it did come it was in the shape of land scrip, nowhere equal in value to the minimum price of public land, and which they were not allowed to touch until they first agreed to go where it could not be located, their own property being used as purchase-money to buy, not merely their right to remove, but also their consent to go where it would be worthless. Even if the scrip had been equal to $1.25 per acre, it was still far short of what they ought to have received, for, to say nothing of the much higher value of land in 1836, when their titles ought, by the terms of the treaty, to have matured, or of the actual loss sustained by reason of dispossession, which in their case was the loss of food and shelter, they contend that, inasmuch as the lands of which they were deprived were sold by the United States, the proceeds belonged to the reservees, and that the Government ought, at the very least,

and in strict justice, to account for them by making up the difference between what the claimants actually realized and the amount actually paid into the Treasury for their lands, with interest up to the date of payment, and that even then they would have received far less than what was right and just, since it was their right under the treaty to *remain* in possession of their farms and improvements until their title ripened, in five years, into a *fee-simple*, and then to sell or not, as they pleased, at their leisure, their farms for a full and fair and adequate consideration. But the Government, they urge, and with great reason, habitually sold the lands for the minimum price of $1.25 an acre, when much of them was worth from five to ten, fifteen, and twenty dollars, and they could have sold for those prices if they had been allowed to remain and been adequately protected. It must be admitted as self-evident that to value all such farms and plantations at $1.25 an acre was giving no adequate compensation to the owners, and it is known that reservees who were so fortunate as to be protected in possession did afterwards sell their lands for many times the minimum price.

Another class of demands under the fourteenth article consists of the claims of two hundred and ninety-two families who remained in the ceded territory, but have not as yet secured either land or scrip. Thirty-eight of these claims, from some cause not stated, have not been adjudicated, although regularly examined. Of the two hundred and fifty-four adjudicated cases, one hundred and ninety-one had been rejected on the ground that the claimants did not reside on their improvements the full term of five years contemplated by the treaty; thirty-one were rejected because the claims were not represented by the "head of a family;" thirteen because the proof was not sufficient that the parties signified their intention to remain; five cases depended upon the testimony of witnesses subsequently impeached, and fourteen were rejected for various miscellaneous causes.

To these various objections the Choctaws reply, in general terms, that the grounds for rejecting most of these cases are found in the peculiar provisions of the acts of Congress under which they were adjudicated, and not in the treaty itself, which is the paramount law; that the treaty evidently meant to provide for *all* who remained in the ceded territory; that the only question to be settled

in any of these cases is, Did the applicants intend to remain? And that in nearly every instance unanswerable proof of such intention is found in the fact that they *did* remain fifteen years after the treaty.

The act of 3d March, 1837, required claimants to show that they had complied or offered to comply with the requisites of the fourteenth article, in order to be entitled to a reservation.

That of 22d February, 1838, cut off all claims of any persons who had removed west of the Mississippi river.

That of 22d June, 1838, directed sufficient lands to be reserved from sale to satisfy all reservations of Choctaws whose lands had been sold by the United States through the neglect or default of any Government officer. But on the 1st of June, 1840, lands covered by pre-emption claims were excepted out of this enactment.

And on the 4th of September, 1841, the act of 22d June, 1838, was repealed altogether.

The act of August 23, 1842, providing for the ascertainment of such Choctaws as had complied with the requisites of the fourteenth article, defined those requisites to be:

1. That the Indian signified to the agent, within six months after the ratification of the treaty, his intention to remain and become a citizen.

2. That at the date of the treaty he "had and owned" an improvement, on which he resided for five years from the ratification of the treaty, unless it were shown that the land was sold by the United States during these five years, and the claimant dispossessed by means of such sale.

3. That he had received no land under any other article of the treaty.

4. That he had not emigrated, but continued to live in the ceded territory.

White men having Indian families were to be allowed no reservation, though members of the Nation by adoption. And no claim was to be regarded that had been sold or assigned within the five years.

It is evident that the exclusion, in February, 1838, *of all who had then emigrated, reiterated by the act of* 1842, *was in violation of the rights of the Indians under the treaty, because those who remained until the* 24*th day of February,* 1836, *five years after the treaty was ratified, were then entitled to an estate in fee, and could then, at least, sell and dis-*

pose of the lands so held, and at any time after remove to the west. Removal after this period could not work a forfeiture; nor when the agents of the Government had used every appliance of persuasion, intimidation, and force to induce or compel the reservees to remove, could the removal so procured, in justice, deprive the Indian of his title to his land.

The act of 1842 went far beyond the treaty in requiring the party to have had and owned an improvement. This the treaty did not require; and so it was very properly decided by Mr. Attorney-General Grundy.

It went beyond it in requiring him to have resided continuously on *the same* improvement for five years, because the treaty did not *confine* the Indian, in the selection of his reservation, to the land on which he resided or had an improvement, but only gave him the *privilege* of selecting that if he preferred it. It was a provision in his favor.

Nor can it be contended that it was not going beyond the treaty to give him no land in the country ceded, where he could not, in consequence of the sale of the land, have that which included his own improvement, but to give him scrip only, and require him to remove west of the Mississippi before he should receive more than one-half of it, since his right was two-fold, and each part of it of value, to have the quantity of land stipulated in the country which was his home, and to remain there and be a citizen of the United States; and this provision compelled him, in order to obtain an inadequate commutation for the former right, to surrender the latter, equally as valuable, and equally a part of the consideration agreed to be given for the lands of the tribe.

White men with Indian wives were "Choctaw heads of families" upon any equitable construction of the treaty, because otherwise their wives and children, undeniably Choctaws, received nothing.

And the treaty had in no case forbidden alienations of claims to reservations within the five years.

In aid of these provisions of law, *none* of the scrip was delivered until after the emigration commenced in 1845. In March of that year Congress directed that the half whose delivery was postponed until after removal should not be issued at all. In autumn of the same year the War Department ordered that *none* should be delivered until the

Indian had actually started, or was about to start, west; and in the spring of 1846 it was ordered that none should be delivered until the Indian had *arrived* west.

Here is a discussion of the legal rights of the appellant under the fourteenth article of the treaty of 1830, as well as a clear and comprehensive statement of the obligations of the United States under that article. It is nowhere intimated that it was good policy to concede to the Choctaws their right to their lands in *fee-simple* on the 24th of February, 1836, provided they had complied, or offered to comply, with all the requirements of that article. The right to a reservation *in fee-simple*, upon performance of the conditions, was acccorded as a matter of legal right under the law of contracts, and not a concession dictated by considerations of *policy*. The case considered was one of violated contract obligation, and not that which discussed the political question involved in the expulsion of the Choctaws from the State of Mississippi.

The other claims of the Choctaws are also considered in this report in the light of *legal obligation*, and not in any sense upon the theory that any "*policy*," political or otherwise, required any concession to this oppressed and dependent people.

2d. The claims of those persons who were entitled to reservations under the nineteenth article are next considered in this report of the Senate Committee; and an examination of that part of the report devoted to a discussion of these claims will fail to reveal any considerations of "*policy*" as furnishing a reason for their favorable consideration. Discussing these claims, the report continued as follows:

The *nineteenth* article of the treaty of 1830 secures specific reservations to certain individuals by name, and to five classes of other reservees a quantity of land dependent upon the size of their fields. Thus—

	Acres.
To the 1st class, not to exceed 40 persons, having 50 acres in cultivation	640
To the 2d class, not to exceed 460 persons, having from 30 to 50 acres in cultivation	480
To the 3d class, not to exceed 400 persons, having from 20 to 30 acres in cultivation	320
To the 4th class, not to exceed 350 persons, having from 12 to 20 acres in cultivation	160
To the 5th class, not to exceed 350 persons, having from 2 to 12 acres in cultivation	80
The aggregate liability in the five classes being	458,400
To which add an additional liability for 90 captains, of	28,800
Making an aggregate liability of	487,200
The number of acres allowed is only	148,960
Being less than the liability created by the treaty	338,240

This deficit arose from the fact that the Choctaw fields were much smaller than was supposed.

For instance, 480 acres were provided for each family having 30 acres and less than 50 in cultivation, the whole number not to exceed 460. It turned out that, instead of 460 families, only 46 had fields of that description, so that the reservations of this class amounted to 22,080 acres, instead of 220,800.

The number of persons having fields of the required size fell short of the treaty limit in every class but the last, which included those having cultivated from two to twelve acres, each to have eighty acres. The number of reservations in this class was not to exceed 350, whereas it was ascertained that 1,763 families had fields answering this description.

The result was, that only 731 families obtained land, instead of 1,600, and the number of acres was 123,680, instead of 458,400, falling short of the quantity indicated in the treaty by 338,240 acres. This amount the Choctaws claim should be made up to them.

To this should be added 23,200 acres for reservations admitted by the Government belonging to the same classes,

but which have never been located, making an aggregate of 361,440 acres, for which they claim, at $1.25 per acre, $451,800.

The Court of Claims found these reservations to be worth one dollar and eighty-five cents per acre in 1830 and 1831, (Finding XXIX,) which would make the amount of claims that ought to have been allowed under that article, as the claim was then asserted, aggregate $668,664.

3d. The report next considers the claims under article XVI, for self-emigration and subsistence, as follows:

Another item in the Choctaw demand is for claims under the sixteenth article of the treaty of 1830, for compensation to those who emigrated at their own expense and have never received any allowance for transportation or subsistence—960 persons at $45 each, $43,200.

To those claims, when heretofore presented, the Indian Department has replied that, inasmuch as the Government, by the terms of the treaty, was under no obligation to remove any Choctaws after the year 1833, no such claim could be considered, although many thousands of dollars were appropriated and expended for the purpose of removing refugee Choctaws from Mississippi between 1844 and 1853.

The Court of Claims allowed for the claims under this article the sum of $51,993, and it is not to be supposed that the allowance was made upon considerations of "*policy*" rather than in recognition of a legal right.

4th. The report then considers the claim for loss of cattle which the United States neglected to appraise and pay for, as required by the sixteenth article:

It is also alleged that at the time of emigrating the Choctaws were compelled to leave behind, and entirely lose, 4,899 head of cattle, valued at $30,835.

No evidence is adduced to show that this loss was in anywise owing to the neglect or bad management of the Gov-

ernment officers, though from the facts stated by the Choctaw delegates, as to the course pursued by those officers, there cannot be much doubt that the stipulation of the treaty, that the cattle of the Choctaws should be valued and paid for, was not duly carried out.

5th. The report next considers the claim for horses and hogs lost in consequence of the enforced and hurried removal of the Choctaws from Mississippi upon the demand of the United States, as follows:

The Choctaws also represent that they lost in consequence of this emigration—

2,796 head of horses, valued at.....	$95,974 00
10,981 head of hogs, valued at.....	33,697 50
	$129,671 50

These latter items could not, under any circumstances, be considered under the head of "cattle," within the meaning of the sixteenth article of the treaty. It is not shown by testimony that they were lost through any fault of the Government, nor is there any evidence to support the allegations in regard to horses, hogs, or cattle, beyond the fact that they are contained in rolls prepared by commissioners appointed under the authority of the Choctaw Government, and that it may naturally be presumed that, upon a forced removal, much property of this kind would necessarily be lost, left, or sold at a great sacrifice.

6th. The report also considers the claims for arrears of annuities; for the interests of those Choctaws who emigrated west prior to the date of the treaty of 1830; for the deficit in the amount of bonds purchased with the money received from the Chickasaws; and for the interest due on the scrip funded under the provisions of the act of March 3d, 1845, as follows:

Another item of $36,632.49 is based upon a report of the Second Auditor, showing that amount to be due under treaties prior to 1830, being for arrearages of annuities, payable during the pleasure of the President, and stopped by

the Commissioner of Indian Affairs without the direction of the President, which the Choctaws contend was essential.

The sum of $356,792 is claimed for Choctaws who emigrated prior to 1830, as their separate share of the benefits secured to the tribe under the treaty made in that year, on the ground that their rights are precisely analogous to those of the Cherokees and Creeks, who were similarly situated, and whose claims have been recognized by the Government. The estimate of the amount due them is based upon the assumption that the western Choctaws constituted *one-thirteenth* of the entire tribe, rating the eastern Choctaws at 24,000 and the western at 2,000. The latter estimate is probably too large, although General Jackson stated, in 1820, that one-third of the whole tribe had removed west; but, on the other hand, Mr. McClellan, agent for the western Choctaws, represented their number in 1828–'29 at about one thousand. Whatever the number then west, it is entirely clear that, as those east were joint owners with them of the lands west, so *they* were joint owners with those east of the lands east, and entitled, equally with them, either to reservations or to a commutation in money, as was expressly decided by the Senate in the parallel case of the Cherokees, and was also decided by the treaty with the Creeks.

A claim is presented for $166,666.66, growing out of a convention between the Choctaws and Chickasaws, ratified March 24, 1837, which provides that the Choctaws shall be paid $500,000, "to be invested in some safe and secure stocks under the direction of the Government." This stipulation was in part fulfilled by the transfer, on the 11th February, 1841, of five hundred Alabama bonds, of $1,000 each; whereas the sum of $500,000 in money was, at that time, as appears from a report of the Commissioner of Indian Affairs, dated October 28, 1840, equal to, and would have purchased, $750,000 in bonds. The Choctaws ask for the difference between the market value of the bonds they received and the money that was promised them. They were certainly entitled to have such amount of the bonds in question as $500,000 in money would purchase, for that was expressly the agreement.

The act of March 3, 1845, provided that one-half of the scrip, deliverable on the Indians' arrival west, should not

be delivered to them, but, instead thereof, the amount of the same should "carry an interest of five per cent.," which the United States thereby agreed to pay "annually to the reservees, under the treaty of 1830, respectively, or to their heirs and legal representatives forever."

The Indian Office decided that this interest did not commence to run until after the arrival of each Indian west. The amount of interest paid under this decision was less, by the sum of $150,989.70, than it would have been if computed from the date of the act of 1845. The Choctaws claim that it ought to have been so computed, and it seems to the committee that, as the act provides that the sum "shall carry an interest of five per cent.," without any further definition of the time when such interest should commence, it ought, by the ordinary rules of law and construction, to have been held to commence from the date of the act; especially as the postponement of the payment of the scrip until after the removal west was itself in contravention of the rights of the parties under the treaty. In equity it would run from the 24th of February, 1836, when, according to the treaty, the rights of the claimants to *fee-simple* titles became complete.

This concludes the statement, which is made in the report of the Senate Committee, of the several claims asserted by the Choctaws. The report then discusses the best means of ascertaining the amount of indemnity which should be provided for a satisfaction of these losses, as follows:

It is evident, from these facts, that the Choctaws are justly and equitably entitled to receive of the United States a large sum, in gross, for non-performance of the stipulations of the treaty of 1830.

The next question is how much that sum should be. The precise sum, it may at once be said, it is now impossible to ascertain.

If we take, first, the claim for additional allowance to those who, failing to secure their reservations, received scrip in lieu thereof, we find that of the 1,585 families shown by the official records to have remained, 1,150, admitted to have done all that was required to entitle them

to reservations, received none of their own lands, but scrip and money, after long delay, in lieu thereof. Their lands were sold for the sum of $1,750,000, and that sum, therefore, was received by the Treasury.

Under the laws enacted subsequent to the treaty it was impossible for an Indian to have his reservation allowed, unless he was clearly entitled, and had been wholly free from default or negligence. These 1,150 families lost their reservations, their homes, farms, and improvements altogether, and exclusively in consequence of the acts of omission or commission of the officers of the United States. They were, therefore, entitled, in justice, to a *full* and complete indemnity. Their lands, partly improved, and naturally selected by them for their superior advantages of soil and situation, were worth, probably, much more than $1.25 per acre; perhaps, on an average, not less than five dollars, and much of it still more.

Evidently to affix an arbitrary, uniform price, and that the minimum price of public lands, on the lands and homesteads thus lost to the parties, and to compel them to take that minimum price or nothing, was no indemnity, even if the amount had been presently paid them in money. It certainly did not proceed upon the principle of ascertaining the true and real amount of their loss, and paying them that. If it was in any exceptional case really an indemnity, that result was of course accidental. That the United States chose to sell their lands for much less than their value, as it in no way lessened their loss, so it in no way set a limit to their right to indemnity.

For example: In one case the claimant "had a house and field in Patickfah, where he resided until four years after the treaty, when a white man (Waters) drove him off." His land was sold August 25, 1835. His claim was allowed in 1846 by the late Governor Marcy, who was then Secretary of War, and scrip was issued to him. It does not appear what he received for the scrip; but, admitting that he realized $1.25 in money for every acre, it was still no sufficient indemnity. What he was entitled to was the undisturbed possession of his land, and the right to sell it to whom, when, and at such price as he pleased. To turn him out of doors by selling it as public land in 1835, to retain the proceeds of sale for eleven years, and then pay them over to him without any allowance for the delay or the use of the money,

or for the value of his improvements, or that of the land over and above the sum for which it sold, was very far from doing complete justice.

By this mode of compensation, all claim was excluded for the value of the *improvements* of the parties, their clearings, buildings, orchards, and the like. Not a dollar was allowed for that; but only the minimum price of unimproved public lands. And no attempt was made to ascertain the *true* value of the lands themselves. Of course, it would at this remote day be utterly impracticable to ascertain the actual and real value of the improvements or lands which were the actual loss of the parties; and as to interest, the very magnitude of the item, exceeding, as it would in the aggregate, a million of dollars, would be likely to prove an insuperable bar to its allowance. If the lands and improvements of the reservees were worth, on an average, five dollars an acre, the difference between their value and their price at $1.25 an acre was over five millions of dollars.

Similar difficulties occur in considering the losses in the sale of scrip. In strict justice, it should be remembered that this scrip was made to serve a double purpose: It was used in compensation for land claims, and also as an inducement to emigrate to the Indian Territory west, where most of it was delivered where it could not be located, and where, consequently, it was comparatively worthless. The Indian had either to sell it at a point remote from any market, or keep it as so much waste-paper. Thus the service the scrip was required to perform as an aid to emigration lessened its value to the claimant. How far this cause operated in reducing the price below the regular market value, what that market value was, or how much the great body of the claimants really lost, are points which cannot now be determined. There is no doubt that the loss fairly chargeable to the Government is considerable, but it would be impossible to fix the amount correctly.

The claims heretofore rejected for reservations under the same article of the treaty may perhaps be more easily disposed of. The objections to most of them arise from a provision in the act of 1842 requiring the claimant to show that he lived on his improvement the full term of five years after the treaty, unless actually dispossessed in consequence of the sale of his land before the close of the five

years. In a large majority of these cases the alleged cause of rejection is that the improvements were voluntarily abandoned. There is ample proof, however, to show that most of the cases of "voluntary abandonment" were in a great degree, if not entirely, owing to the emigrating agents of the Government. A joint resolution was passed by the Senate in 1852 for the relief of the parties in such cases, but was so essentially modified in the House of Representatives as to destroy its intended effect.

The practical operation of the provision in question, in cases where the abandonment was not voluntary, is shown by comparing the case referred to as allowed in 1846 by Governor Marcy, with another of precisely the same character, adjudicated at the same time, and rejected.

The two parties lived on adjoining sections. They were both heads of families, and had both signified to the agent their intention to remain. Both were dispossessed at the same time and by the same person, the only difference being that the dispossessor entered the one tract at the land office and did not enter the other. Consequently the former case fell within the act of 1842; the latter did not.

It is manifest that if either of these parties were entitled under the treaty, they both were.

It would, probably, not be difficult to ascertain which of the rejected claims ought to be allowed and which ought not. But if any of these claims are admitted, the question arises, What is the proper measure of relief? The claimants are nearly all in the Indian country west. Their lands have long since been sold, and cannot be given back. To award scrip in the face of past experience would be absurd. If money is to be paid, how much?

Similar difficulties would be met with in attempting to fix the proper amount of indemnity under the other claims.

It is obvious that the operation of the nineteenth article was, contrary to the intention of both parties to the treaty, very unequal and unjust. One party who emigrated was as much entitled to have the benefit of, and pay for, his improvements as another. In regard to that, it was peculiarly the case that equality alone could be equity. In consequence of a mutual error, the larger number received nothing for their improvements, and the United States profited by the error to a corresponding extent. They had devoted 458,400 acres of land to the use of compensating for

such improvements, of which 127,040 acres only were used, leaving as profit to the United States 331,360 acres. It is equally impossible, in regard to these claims, as in regard to those under the fourteenth article, now to ascertain the actual value of the reservations provided for, embracing, as each did, the improvements and home of the parties, and the treaty giving them a *fee-simple*, with the power to sell.

Those Choctaws who have emigrated at their own expense are, unquestionably, entitled to reimbursement; but the Government has always refused to examine their claims, and they consequently are not, and cannot now be, presented in such authentic shape as to admit of certainty and justice of adjudication.

The Choctaws who had emigrated west prior to the treaty of 1830 certainly retained in the eastern lands of the tribe an equal and common interest proportioned to their numbers; and that interest could not justly be taxed with any part of the expense of removing or subsisting those who subsequently removed. But it would be idle now to attempt to ascertain their number or the actual value in 1830 of their interest in those lands.

The moneys for which the 1,150 reservations were sold actually belonging to the reservees, the Government, if it could be charged in equity, would be adjudged to have held those moneys in trust for them, and to be liable to pay interest, not from the date of the act of March 3, 1845, but from the time when the price of each reservation was received. If that act meant to give interest accordingly, from the time of receipt, and not from its date, it would be utterly impracticable to establish the data for the calculation, because the reservations were not sold as wholes, or each at one time, but by the divisions and subdivisions of the public surveys.

The United States was to take the cattle of the Choctaws; and there is no doubt that on this score also they have a just and fair claim, but to what amount it is now wholly impossible to ascertain.

It being thus impossible to ascertain to how much the Choctaws would be entitled, on a fair and liberal settlement, for the damage and loss sustained by them, it seems to the committee that the only practicable mode of adjustment is to give them the net proceeds of their lands, not

on the ground that the letter of the treaty entitles them to it, but that it is the only course by which justice can now be done them.

And while, on the one hand, to award to the tribe the net proceeds of their lands, would surely be no *more* than just to them, because, practically no regard is paid to actual value by the United States in the sales of public lands; and undeniably the real market value of these lands, which the Indians might have realized, if protected in their possession, was far greater than the price for which they actually sold; on the other hand, the United States would neither have lost, paid, nor expended anything, whatever, but would only have refunded to the Choctaws the surplus remaining on hand of the proceeds of their own lands, after having repaid themselves every dollar expended for the benefit of the Choctaws; and that after having had the use of this surplus for many years without interest, and when, according to the estimates of the General Land Office, *it would really amount to little more than half of what might be recovered in a court of equity, if the case were one between individuals, as will appear by the comparative statement hereto appended.*

The committee accordingly report the following resolutions, and recommend that they be adopted and made *the award and judgment of the Senate upon the questions submitted by the treaty of* 1855.

The only consideration of "*policy*" which this report reveals is that which suggests that the "*allowance*" to the Choctaws of the "*net proceeds*" of the lands ceded by the treaty of 1830 *would be the least valuable and provide the most inadequate indemnity to the Choctaws.* It was "*quite impossible*" to ascertain how much the Choctaws would be entitled to receive on a just and fair settlement for the damage and loss sustained by them; and so the Senate decided, *not upon considerations of policy,* but as the most "*practicable*" of all the means of indemnity provided by the treaty, to allow the proceeds of the sales of the ceded lands. It was the only course by which even an inadequate measure of justice could at that time be secured to the Choctaws. It fell far short of what they could have re-

covered in a court of equity, but it was the best that could be done under the authority of the treaty. It was less than the Senate would have allowed if it had been a court of equity. The Senate examined the claims sufficiently to be convinced that if they were adjudged upon those legal and equitable principles which were applicable to their determination, the Choctaws would recover a sum largely in excess of the proceeds of the sales of the ceded lands, after making the deductions which were required by the treaty of 1855.

How, then, can it be said that the Senate, IN THE EXERCISE OF ITS POWER UNDER THE TREATY OF 1855, ASSUMED FUNCTIONS OF POLICY UNAUTHORIZED BY THE RULE OF LAW WHICH WAS TO GOVERN ITS ADJUDICATION BY THE SUBMISSION UNDER THAT TREATY, when that body decided the questions submitted in exact accordance with the terms of the treaty submission? It will not be questioned that the words "OR SHALL BE ALLOWED" are sufficiently broad and comprehensive to authorize the Senate to make that award and render that judgment upon the questions submitted, which was expressed in the resolution which the Senate adopted as its award and judgment. The treaty prescribed no rule of law to the Senate, unless it was expressed in that language of *the eleventh* article which declared that the United States were "desirous that the RIGHTS AND CLAIMS OF THE CHOCTAW PEOPLE AGAINST THE UNITED STATES SHOULD RECEIVE A JUST, FAIR, AND LIBERAL CONSIDERATION." That was the only rule of law which the treaty prescribed to the Senate in its adjudication of the questions submitted, and it was not more just or equitable than this court has frequently declared to be the rule of interpretation which should be adopted by the courts in the construction of all treaties made with these "dependent wards of the Nation."

Worcester *v.* State of Georgia, 6 Peters, 582.
The Kansas Indians, 5 Wall., 760.
Fellows *v.* Blacksmith, 19 How., 372.
Polk *v.* Best, 18 Wall., 116.

Whatever JUSTICE, FAIRNESS, or LIBERALITY required, the Senate, within the limits of the questions submitted, had full and complete authority to allow.

There is nothing in the report of the Senate Committee which justifies the assumption of the Court of Claims that the Senate was actuated by considerations and principles of "POLITICAL POLICY" rather than "JUDICIAL JUSTICE." The occasion for exercising functions of political policy ceased, so far as the appellant was concerned, when the Senate assented to the treaty of 1855. The political question involved in that negotiation was whether it was expedient and wise for the United States to consent to a *new examination* of the questions of difference which had so long existed between them and the appellant, and provide in a *new treaty* for a reconsideration of all the "RIGHTS AND CLAIMS" of the Choctaws in the manner, and according to the spirit, of the *eleventh* article, in consideration of the concessions made by the Choctaws.

Was it expedient, was it wise policy for the United States to provide THAT "A FINAL SETTLEMENT" with the Choctaws should be "PROMPTLY EFFECTED," in consideration of the release, by the Choctaws to the United States, of all the lands owned by that Nation west of the 100th degree of west longitude? Was it wise political policy for the United States to consent that the Senate might allow to the Choctaws "A GROSS SUM IN FURTHER AND FULL SATISFACTION OF ALL THEIR CLAIMS against the United States, NATIONAL and INDIVIDUAL," in consideration of the lease by the Choctaws to the United States of so much of their lands as were situated between the 98th and 100th degrees of west longitude? These were political questions, and they might properly be taken into account in determining whether or not a treaty which provided for a re-examination of the "rights and claims" of the Choctaws, and for the allowance of the "*net proceeds*" of the sales of the lands ceded by the treaty of

1830, or "A GROSS SUM" in FURTHER AND FULL SATISFACTION of the national and individual claims of the Choctaws, should be rejected or ratified by the Senate. If it shall be answered to these suggestions that a *money consideration* of six hundred thousand dollars was paid for the relinquishment and lease above specified, and that the covenants of the *eleventh and twelfth* articles were not made in consideration of said lease and relinquishment, then it is answered, that, in contemplation of law and of reason, *every covenant* of a treaty in favor of one party becomes a consideration supporting each of the covenants in favor of the other party.

Opinions of Attorneys-General, vol. 6, p. 151.
Vattel, Book 2, ch. 13, pp. 214, 215.
Wildman's Institutes, vol. 1, p. 174.

When the "award and judgment" of the Senate was made and rendered, there was no need of doing anything to conciliate the Choctaws, for they were not then, and had never been, in an attitude of hostility to the United States. The relations of peace and friendship existed between that Nation and the United States, and there was no need that the Senate should, as a matter of favor as distinguished from "judicial justice," award to the Choctaws the "*net proceeds*" of the sales of their lands ceded by the treaty of 1830, subject to the charges and deductions required to be made by the terms of article XI of the treaty of 1855.

There is, however, one view that may be taken of the award and judgment of the Senate which might justify the charge that the Senate was actuated by considerations of "political policy," rather than inspired by a high sense of "judicial justice," in the decision which awarded to the appellant the "*net proceeds*" of the lands ceded by the treaty of 1830. The *twelfth* article of the treaty of 1855 contains the following stipulation:

In case the Senate shall award to the Choctaws the net

proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; *and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just.*

The same result, so far as the assumption of liability for the payment of "*individual claims*," followed the allowance by the Senate of "A GROSS SUM" in "FURTHER AND FULL SATISFACTION" of the national and individual claims asserted by the Choctaws.

The Choctaws had asserted claims for the losses they had sustained by reason of being deprived of their reservations under the *fourteenth* article. They claimed that the scrip issued in lieu of their reservations was in no sense a satisfaction of the losses thus sustained, if their reservations were worth no more than the amount allowed by the Court of Claims as the value thereof in 1830 and 1831—one dollar and eighty-five cents per acre. They claimed, however, that the lands which the United States agreed to grant them in *fee-simple* under that article "they could have sold, in many cases, for from five to ten dollars an acre." (Record, p. 81; finding XXVIII.)

The amount claimed as damages on account of the nonperformance of the fourteenth-article claims was $2,210,176. This statement allows to the United States $1.25 per acre for the *funded* scrip, and 17 cents per acre for the unfunded scrip. The nineteenth-article claims as considered by the Senate, estimated at the value which the Court of Claims put upon them, was $668,664. They claimed as due to the Choctaws who emigrated west previous to the date of the treaty of 1830, upon the theory that they were joint owners of the territory ceded by that treaty, to the extent of *one thirteenth part* of the proceeds of the ceded lands, $356,792. They claimed for a deficiency in the

amount of bonds bought by the United States with the money received by them from the Chickasaws, $166,666. They claimed for interest due on funded scrip, $150,989. They claimed for loss of horses and hogs, $129,671. They claimed for removal and subsistence, and for cattle lost, $74,000. They claimed for "rifles to warriors," $19,278. They claimed for the pay of principal chief, $10,000. They claimed for annuities due under former treaties, $36,639. The aggregate of all these sums is $3,633,475. The balance due the Choctaws, as shown by the "comparative statement" of the amount due upon the theory of allowing the net proceeds of the sales of the ceded lands, and *sixty-two and one-half* cents per acre for the unsold lands, was $2,226,735.50. This comparative statement charged the Choctaws with $4,218,529 for reservations secured, scrip paid, and for money and other articles paid under the provisions of the treaty of 1830. An examination of this comparative statement shows that the amount claimed as due to the Choctaws, together with the amount that had been charged as payments under the treaty of 1830, exceeded the estimated net proceeds of the lands, as shown in finding XXVI, Record, pp. 77, 78, 79.

It may be possible that the Senate, considering the then *known* and estimated condition of the account upon a plan of settlement which "*allowed*" the "*net proceeds*" of the sales of the ceded lands, foresaw that if that plan of settlement should be adopted the Choctaws would be burdened with a debt far in excess of the amount that would be realized from the "*net proceeds*" of the sales of the ceded lands. The suggestion that this was the "*policy*," and these the considerations, which inspired the decision of the Senate, is not justified by any language to be found in the report of the Senate Committee. It is true that this solution of the motives which inspired the decision of the Senate does not suggest considerations which are entirely creditable to that body, but they are not more discreditable than the

charge which the Court of Claims makes against the Senate when, with judicial deliberation, it declares that the Senate, in its decision of the questions submitted, "*assumed functions of policy unauthorized by the rule of law which was to govern its adjudication by the submission*," and that it applied to the case submitted for its adjudication "PRINCIPLES OF POLITICAL POLICY, RATHER THAN THE RULES OF JUDICIAL JUSTICE."

The result of this somewhat elaborate discussion of a very simple proposition is appropriately concluded by stating the following propositions:

1st. The treaty, which was to the Senate the agreement of submission, authorized *the allowance* of the net proceeds of the sales of the ceded lands if the Senate, as the result of its examination of the whole case, should consider that it was "JUST, FAIR, AND LIBERAL" to the appellant to adopt that plan of settlement.

2d. There is not in the report of the Senate Committee, or in the adjudication and decision of that tribunal, any evidence that its decision, and the award and judgment which resulted therefrom, was moved, actuated, or inspired by any "*policy*" or any motive, except such as was authorized by the letter, spirit, and purposes of the treaty of 1855.

3d. That even if the Senate in its decision did assume "functions of policy unauthorized by the rule of law which was to govern its adjudication by the submission," still its award and judgment, if within the terms of the authority conferred by the treaty, was valid, and the Court of Claims erred in considering the adjudication and decision as of no force or effect for that reason.

D. THE CONSIDERATION WHICH WAS GIVEN BY THE SENATE TO THE QUESTIONS SUBMITTED BY ARTICLE XI OF THE TREATY OF 1855 HAVING BEEN "FULL, FAIR, AND IMPARTIAL," AND THE ADJUDICATION OF THE SENATE, AS MADE UNDER SAID ARTICLE, NOT HAVING BEEN INFLUENCED OR AFFECTED BY, AND IN NO WAY OR DEGREE THE RESULT OF, ANY FRAUD, CORRUPTION, OR PARTIALITY, OR THE RESULT OF SURPRISE OR MISTAKE ON THE PART OF THE SENATE, OR ANY MEMBER THEREOF, THE PRIMA-FACIE FORCE AND EFFECT OF THE AWARD AND JUDGMENT OF THE SENATE WAS NOT DESTROYED BY ANY INFIRMITY OF FACT WHICH IN LAW WOULD HAVE EFFECTED THAT RESULT.

Unless the award of the Senate was set aside and destroyed *by force of the terms of the jurisdictional act*, there were but two ways by which that result could be accomplished:

1st. By the neglect or failure of the Senate to discharge the duties devolved upon it by article XI of the treaty of 1855, as those duties were defined by that article, or by the assumption by the Senate of functions and duties or a jurisdiction not conferred or warranted by the terms of that article of the treaty; so that the award and judgment of the Senate would show upon its face such infirmities in law as destroyed the *prima-facie* force and effect of the action of the Senate under the authority of the treaty, and thereby rendered the said award and judgment of no force or value when offered in evidence to sustain a cause of action or right based upon said award and judgment.

2d. That the award or judgment was the offspring of, or was procured by, the use of collusion, fraud, corruption, or flagrant partiality.

The existence of the first of these legal infirmities in an award or judgment is to be determined by an inspection of the record of the court or of the proceedings of the arbitrators. If it appears that the arbitrators had jurisdiction of the subject-matter in respect to which they made the award; that they have decided the matters or questions submitted; that they have heard the parties, and fully and fairly considered the subject-matter submitted to them; that they have not destroyed the force of their award by mingling with and making a part of it matters not submitted to them, so that the matters submitted cannot be separated from those not submitted,—then the award is *prima facie* good and conclusive upon the parties by whose agreement the *submission was made.*

The Court of Claims, in its opinion, used the following language in regard to the force and effect of the adjudication and decision of the Senate when offered in evidence in that court:

It does not follow, however, that the action of the Senate will be wholly without force or effect under any circumstances of the case, that it cannot be given in evidence for any purpose, and that all reference to it in the petition must be disregarded and ruled out on demurrer. The act does not so provide. The jurisdiction conferred is general to try all questions of difference arising out of treaty stipulations. Power is there granted to the court to review the entire question of differences *de novo. One of the questions of difference may be whether the decision of the Senate was warranted by the* FACTS. *To review* that question we must have the action of the Senate before us.

Either party may put in evidence that adjudication, and if not controverted, it may present the principles, as far as it goes, upon which our final decision will rest; *but if controverted, we shall consider whatever* FACTS *and arguments may be offered in relation thereto.*

Record, p. 103.

The award and judgment of the Senate was admissible in evidence by the rules of law, because, and only because,

it was the record of a competent trib :nal, created by treaty stipulation, whose awards or decrees upon the subjects submitted were by the general principles of law and by express agreement to be final. It was admissible in evidence because it established, even under the authority conferred upon the Court of Claims, "TO REVIEW *de novo*" the *prima-facie* right to recover the amount shown to be due under the award and judgment of the Senate. The Court of Claims, in its decision of the demurrer, declared that the adjudication and decision of the Senate was "properly introduced in the petition," and that "it may be presented at the trial as *prima-facie* evidence."

Record, p. 37.

A right established by *prima-facie* evidence must stand until it is overcome by *evidence* which destroys it. It cannot be destroyed because a legislative enactment directs the courts to give no force or effect to the evidence by which the *prima-facie* case or right has been established. Courts have no right to disregard such evidence nor to instruct juries to disregard it. *Prima-facie* evidence of a fact is such evidence as in the judgment of law is sufficient to establish the fact; *and if not rebutted*, remains sufficient for that purpose.

Crane *v.* Morris, 6 Peters, 598.
United States *v.* Wiggins, 14 Ibid., 334.
Lilianthal's Tobacco *v.* United States, 97 U. S. R., 237, 268.

It was in legal effect *a judgment*, and, as such, was admissible in evidence in all judicial proceedings. It was admissible in evidence because it was the record of a tribunal of competent and exclusive jurisdiction. The legal characteristics of the conclusions of such tribunals are not different in law from those of the ordinary judicial tribunals.

This proposition is asserted in Freeman on Judgments (section 320) in the following language:

> The effect of a valid award upon the matters submitted to the arbitrators is equivalent, so far as the question of estoppel is concerned, to the effect of a valid judgment. No satisfactory reason can be assigned why a judgment, as an act of the law, should estop the parties, and an award, *which is another name for a judgment*, which the parties have expressly stipulated should be final as to the subjects submitted, should not be equally conclusive.

The fact which made this record of the proceedings of the Senate, under the treaty of 1855, competent evidence in a judicial proceeding, was, that it was the conclusion and decision of that body upon a subject submitted by treaty stipulation; and that by the terms of the treaty which created the tribunal and conferred its jurisdiction, as well as by the general principles of law, its adjudication and decision of the questions or subjects submitted was to be *final*. The appellant contended in the Court of Claims, and here contends, that this record was competent evidence to sustain its right to recover a judgment against the United States for the amount which should be found due upon the principles of decision which it adopted, for the following reasons:

1st. Because it showed the submission of certain matters, subjects, and questions, "rights and claims," to the adjudication and decision of the Senate.

2d. Because the Senate adjudicated and *finally decided* the matters submitted in exact accordance with the terms of the submission.

It is obvious that such an award and judgment could only be impeached, and its force and effect in law destroyed, by evidence *outside of and beyond the record by which these facts were shown.*

This principle of law is no longer a matter of dispute; it has become so thoroughly established and so familiar as to find recognition and affirmance in the text-books. It is declared in Freeman on Judgments in the following language, under the title JUDGMENTS IMPEACHABLE; WHEN AND BY WHOM; chap. XIII, sec. 334:

We have already shown the final and conclusive nature generally conceded to belong to judgments sought to be attacked upon jurisdictional or upon other grounds. But there are a few instances in which, it is said, judgments may be impeached. A general statement of the law upon this subject, announced with great apparent confidence in its correctness, has been made in the following language: "The distinction between cases in which judgments may and those in which they may not be impeached collaterally, as derived from the authorities and founded in common sense, may be stated thus: They may be impeached by facts involving fraud or collusion, which were not before the court or involved in the issue or matter upon which the judgment was rendered. They may not be impeached for any facts, whether involving fraud or collusion or not, or even perjury, which were necessarily before the court and passed upon." But this language, in our judgment, does not correctly state the distinction. It is true that fraud and collusion are the chief grounds available for the purpose of impeaching a judgment, but they are not available for the purposes of impeachment merely because they were not before the court nor involved in any of the issues in the former action. The *parties to an action* cannot impeach or set at naught the judgment in any *collateral proceeding* on the ground that it was obtained through fraud or collusion.

It is their business to see that it is not so obtained. If, without any fault or neglect of one party, his adversary succeeds, by fraud, in obtaining an inequitable and unauthorized judgment, he must take some proceeding prescribed by law to annul the judgment, and cannot, in the absence of such annulment, treat it as invalid. It is only third persons who have the right to collaterally impeach judgments. They are accorded this right because, not being parties to the action, nothing determined by it is, as to them, *res judicata.*

The rules by which courts are to be controlled in proceedings for the impeachment of judgments are very clearly stated by this court in the case of *United States* v. *Throckmorton*, 98 U. S. R., p. 61, where many of the authorities upon this question are cited and received by Mr. Justice Miller.

The Court of Claims has declared as a fact established that there was no "fraud or corruption or partiality" on the part of the appellant in securing said award and judgment, and "no surprise or mistake" on the part of the Senate in the making of its award or decision. It necessarily follows that the award and judgment of the Senate cannot be destroyed, in consequence of the existence of any "*facts*" which show it to have resulted from "fraud, corruption, or flagrant partiality" on the part of the appellant or of the Senate. The Court of Claims, in its opinion, declares that it finds as facts—

That the consideration of the Senate "was full, fair, and impartial; and that its adjudication as made under said article was not influenced or affected by, and was in no way or degree the result of, any fraud, corruption, or partiality; and there is no evidence tending to show that it was the result of surprise or mistake on the part of the Senate or any member thereof."

And that—

It would have been a strange and melancholy reflection on our political condition if any other position than that of the most respectful consideration of the purity and integrity of the Senate had been taken by the law officer of the Government, or shown by the findings of this court. No effort was made to attack the award upon any other ground than that it applied principles of political policy, rather than rules of judicial justice, in the decision of the controversy, as required by the nature and character of the submission.

Record, p. 104.

The adjudication and decision of the Senate stands, therefore, by this finding of the Court of Claims, upon that strong and firm foundation of fact which protects it from impeachment, in consequence of the existence of facts which have been shown outside of the record. The Court of Claims, by its findings of fact, as well as by the strong statement of its opinion, justifies the affirmation, that this award and judgment of the Senate has no infirmity of fact, by reason of which it must perish and be destroyed. The Court of Claims did not thus destroy it; but it made the jurisdictional act accomplish that which neither the facts nor the *law* by which its power was to be exercised *could* accomplish. It would result in a strange perversion of *legislative power* if the jurisdictional act should receive such construction, or has within its provisions such vice as directs a court upon which jurisdiction has been conferred to reverse, set aside, or ignore those rules of evidence by which judicial tribunals are governed in the admission of testimony. Unless those rules are to be reversed for the purposes of the present adjudication, it *must* be held that the adjudication and decision of the Senate in favor of the appellant does, in this proceeding, establish the *prima-facie* right of the appellant, even under the enlarged powers of the jurisdictional act, to recover the amount due from the United States under that adjudication and decision; and that the *prima-facie* right thus established must remain until it is overthrown by *evidence*, rather than by a *legislative enactment.*

E. THE COURT OF CLAIMS, IN ITS EXERCISE OF THE POWER "TO REVIEW THE ENTIRE QUESTION OF DIFFERENCES DE NOVO," WAS AUTHORIZED TO EXAMINE INTO AND CONSIDER "THE RIGHTS AND CLAIMS" OF THOSE CHOCTAW HEADS OF FAMILIES AND THEIR CHILDREN WHO WERE DEPRIVED OF THE RESERVATIONS TO WHICH THEY WERE ENTITLED UNDER ARTICLE XIV OF THE TREATY OF 1830, ALTHOUGH "THE RIGHTS AND CLAIMS" OF SUCH RESERVEES HAD BEEN EXAMINED, ADJUSTED, AND SETTLED IN THE MANNER PROVIDED IN THE ACTS OF CONGRESS APPROVED MARCH 3D, 1837, FEBRUARY 22D, 1838, AUGUST 23D, 1842, MARCH 3D, 1845, AND JULY 21ST, 1852.

There are two aspects in which the act conferring jurisdiction upon the Court of Claims, in respect to its power "to try all questions of difference arising out of treaty stipulations, and to render judgment thereon," may be considered:

1st. That the jurisdictional act, by force of its own terms, and without the exercise of the judicial power therein vested in the Court of Claims, "TO REVIEW the entire question of differences *de novo*," set aside and destroyed the adjudication and decision of the Senate under the authority of article XI of the treaty of 1855.

2d. That the award and judgment of the Senate, under the treaty of 1855, could only be set aside and destroyed by the proof of such facts, or the existence of such infirmity in *law*, as would justify the Court of Claims in setting the same aside, as a result of the exercise of the power "TO REVIEW" the question of differences *de novo*.

If the *first* of these views of the jurisdictional act shall be decided to be correct, then it necessarily results that

all the powers and duties which were conferred upon and vested in the Senate were to be exercised by the Court of Claims in the exertion of its power "TO REVIEW the entire question of differences *de novo.*" The *Senate* was required to adjudicate, decide upon, and answer the *questions* submitted and propounded by the *eleventh* article of the treaty of 1855; and if the force and effect of the jurisdictional act was to put an end to articles XI and XII of the treaty of 1855, as well as to all that had been done by the Senate in the execution of the power and the performance of the duty conferred by article XI of that treaty, then it is obvious that the Court of Claims must decide all the questions which the Senate, by that treaty, was required to determine. If the action of the Senate was set aside, and its award and judgment destroyed, by the language of the jurisdictional act, then it necessarily follows that the stipulations of the eleventh article of the treaty of 1855 are not executed, and the extent of the obligations which they imposed upon the United States were to be determined by the Court of Claims, unless the power to decide the questions submitted by that article may yet be exercised by the Senate.

Assuming, however, that the jurisdictional act put the Court of Claims in the place of the Senate, for the purpose of having a judicial determination of the questions submitted to that tribunal, then that court was to determine—

1st. Whether the appellant was "*entitled to*" the net proceeds of the lands ceded by it to the United States by the treaty of 1830.

2d. Whether the appellant should "*be allowed*" such proceeds upon a consideration of all the "*rights and claims*" of the appellant against the United States, in that spirit of fairness, justice, and liberality which the treaty of 1855 required.

3d. What price per acre "*should be allowed* to the Choctaws for the land remaining unsold."

4th. Whether the Choctaws should be allowed a gross sum in FURTHER AND FULL SATISFACTION of all their claims, national and individual, against the United States.

The Court of Claims decided the *first* of these questions when it declared that, by the provisions of the treaty of 1830, the appellant was not "*entitled to*" the "net proceeds" of the lands ceded to the United States by that treaty. It did not consider or decide whether, upon a consideration of all the "*rights and claims*" of the appellant, inspired by the command of the treaty of 1855 to be "just, fair, and liberal," the appellant ought to have been allowed the "net proceeds" of the sales of said ceded lands. It did not discuss, consider, or decide anything in regard to the "price per acre that should be allowed to the Choctaws for the land remaining unsold."

The Court of Claims having ignored two provisions of the *eleventh* article of the treaty of 1855, enters upon the consideration of the question as to how much, or what sum, should be allowed to the appellant by the United States under each of the different treaty stipulations of the treaty of 1830. In determining that question, the court did not pretend to be guided by the principles which the parties to the treaty had agreed should be the rule of decision. It substituted for that rule of justice and liberality, which the parties had established and agreed upon, the strict common-law rule applicable to the determination of rights under ordinary contract obligations. In the consideration of these subjects, the court, in this spirit, examined the claims of individual Choctaw heads of families who brought themselves within the requirements of the *fourteenth* article of the treaty of 1830, but were deprived of their rights by the fraud and wrong of the agents of the

United States who were charged with the duty of executing the provisions of that treaty, and by the acts of Congress passed for the purpose of relieving the United States from its obligations under the provisions of that article of said treaty.

The Court of Claims decided as matter of law, in respect to "*the rights and claims*" asserted by the appellant under said article XIV of that treaty, as follows:

1st. That because the claims of eleven hundred an fifty-five Choctaw heads of families were examined, allowed, and settled by the payment of scrip, as provided in the acts of March 3d, 1837, February 22d, 1838, and August 23d, 1842, and because one-half of said scrip had been funded, as provided in the act of March 3d, 1845, and paid to the appellant under the terms and provisions of the act of July 21st, 1852, therefore the "*rights and claims*" of said eleven hundred and fifty-five Choctaw heads of families and their children were adjusted, settled, satisfied, released, and discharged, and the said "Choctaw heads of families and their children" were thereby precluded from asserting any further "*claim or right*" against the United States, based upon or growing out of the non-performance by the United States of the stipulations of said article XIV of the treaty of 1830.

2d. That the claims of one hundred and ninety-one of those Choctaw heads of families and their children whose claims were presented to and *rejected* by the commissioners appointed under the acts of March 3d, 1837, and August 23d, 1842, and who received neither reservations, scrip, nor money, were entitled to reservations amounting to 225,760 acres, of the value of $417,656. The court held that the said claims of said reservees were erroneously rejected, because the act of 1842 had imposed conditions upon the right of recovery which were in conflict with, and a violation of, the provisions of the *fourteenth* article of the treaty of 1830.

The Court of Claims, in the conclusion of its discussion of the first proposition, used the following language:

If the rights of the parties and those whose claims were allowed existed in fact and law, as they did upon the expiration of the agency of Ward, if the individuals had disregarded the propositions of adjustment contained in the several acts passed by Congress to ascertain the extent of their rights, if no interest had been accepted, if no money had been received in payment of a perpetual annuity, which was the result of the fund arising from the proceeds of the lands accruing under the treaty of 1830, the situation of the case would, in law, be radically different; and the question is, Can we disregard what has been done by the parties since the close of the six months' limitation under the treaty, allow what the heads of families would be entitled to, according to its then value, deducting what has been paid by the defendants?

Record, p. 112.

There is nothing in the record to show what agency, if any, the Choctaw Nation had in the passage of the different laws from 1837 to 1852; but it does appear that, through agents and attorneys, parties accepted such recognition of alleged rights as Congress saw fit to give them in the various laws passed upon the subject-matter of their claims under the treaty of 1830. As has been said, the character of the investigation under the various acts was similar to a judicial investigation, each claimant appearing, not in the weakness of his ignorance, but represented by agents and counsel competent to defend every right incident to the applicant under the laws of the United States. The findings show that under the act of 1842 the commission remained in session long enough to dispose of the business contemplated by the purpose of the act, and those who applied under the act of 1842, and successfully sustained their claim, either got the land they were entitled to or received scrip in lieu of such reservations, and participated in the fund of the act of 1845.

The same authority that made the treaty of 1830, and all other treaties commencing in 1782, and which, under the provisions of the act of 1881, brings this suit executed and delivered through its legally-constituted authorities the

release of November 6, 1852; and if that instrument, with what preceded it in the history of the parties thereto in relation to the same subject-matter, is to be disregarded it must be so announced by a distinct act of legislation. It is not for courts to discuss and determine questions of policy, they have none; and the best and highest function they perform is to apply the law as it may exist.

Record, pp. 112, 113.

If by reasonable intendment we could assume that the treaty of 1855 destroyed in law the legal effect of what the parties did under the various acts of Congress, we would not hesitate to open the whole question of the liability of the Government, because of the manner of the execution of that portion of the treaty of 1830 which provided for individual Indians; and were it not for the effect in law of what the parties did in relation to grievances of that character the result of this cause might be very different.

* * * * * *

But while we concede to the release the legal effect of discharging the liability of the Government as to a class of claimants under the fourteenth article, we are not disposed to extend it by implication or construction. The Government is entitled to rights under it only in so far as by its letter and purpose it bars the claims of the Indians. The fund provided by the act of 1845 represented the individual claimants who had successfully maintained their rights to reservations before the commission provided by the act of 1842. Those whose claims were rejected never became recipients of the fund provided by the annuity of 1845, and in dealing with that fund, after its creation, the Choctaw Nation represented only the 1,150 families whose reservations became a part of the $872,000; the legal effect of the act of July 21st, 1852, and the release executed in pursuance of its provisions, was to settle claims and rights incident to those who were represented in that fund. The act recites that "the Secretary of the Interior be, and he is hereby, directed to pay said claimants the amount of principal awarded in each case, respectively;" and the release concludes, "as a final release of the claim of such parties."

Record, pp. 114, 115.

The treaty of 1830 was not only the supreme law of the land, but it was also a *contract* with the appellant. It was of more exalted character than an ordinary contract, because it was a *treaty* between the United States and one of its dependent Indian tribes. The terms of such treaties, as repeatedly declared by this court, are to be construed by the application to them of the principles of enlarged and liberal equity.

Worcester *v.* The State of Georgia, 6 Peters, 582.
Fellows *v.* Blacksmith, 19 How., 372.
The Kansas Indians, 5 Wall., 737–760.
Polk *v.* Best, 18 Ibid., 116.

No language can exceed the force with which Mr. Webster declared the same legal proposition in his opinion on the Florida Claims, which had their origin in the treaty of 1819 between the United States and Spain. Speaking of the force and sanctity of *treaty obligations*, he said:

A *treaty* is the supreme law of the land. It can neither be limited, nor restrained, nor modified, nor altered. It stands on the ground of *national contract*, and is declared by the Constitution to be the supreme law of the land, *and this gives it a character higher than any act of ordinary legislation. It enjoys an immunity from the operation and effect of all such legislation.*

Senate Report No. 93, 1st Sess., 36th Cong., pp. 16, 22.

That *treaty obligation* into which the United States entered with the appellant, which the Court of Claims declares was satisfied by that which was done under the provisions of the above-specified acts of Congress, was as follows:

ARTICLE XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States, shall be permitted to do so, by signifying his intention to the agent within six months from the ratification of this treaty, and

he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age, and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands, intending to become citizens of the States, for five years after the ratification of this treaty, in that case a grant in *fee-simple* shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but, if they ever remove, are not to be entitled to any portion of the Choctaw annuity.

7 Stats. at Large, p. 335.

Such was the covenant into which the United States entered with the appellant on the 27th of September, 1830. It is conceded by the Court of Claims that the rights intended to be secured to the appellant were not secured, except as to *one hundred and forty-three* Choctaw heads of families, although there were *thirteen hundred and forty-six* of such heads of families who complied, or offered to comply, with all the terms and requirements of said article. The said court further find that the said last-specified number of Choctaw heads of families were entitled to *one million six hundred and thirty thousand four hundred acres of land*, (findings XII, XIII, XIV,) and that the said lands were worth in the years 1830 and 1831 *one dollar and eighty-five cents per acre*, or an aggregate sum of *three million sixteen thousand two hundred and forty dollars.* (Finding XXIX.) It is conceded by the Court of claims that no provision was made by the United States for the satisfaction of said claims until subsequent to the 24th of February, 1836, when the grants *in fee-simple*, to which said thirteen hundred and forty-six Choctaw heads of families became entitled, matured and became deliverable.

THE RIGHTS OF SAID THIRTEEN HUNDRED AND FORTY-SIX CHOCTAW HEADS OF FAMILIES AND THEIR CHILDREN WERE COMPLETE CONTRACT RIGHTS UNDER TREATY STIPULATIONS.

In order that the exact nature of the rights which these *thirteen hundred and forty-six* Choctaw heads of families and their children had acquired by virtue of their compliance with the terms of the fourteenth article may be fully understood, attention is invited to the case of Ladiga *v.* Roland, decided by this court. That case involved the construction of the terms of the treaty with the Creek Nation concluded March 24th, 1832. The *second* article of that treaty provided reservations of one section to each of the ninety principal chiefs, and a reservation of a half section to each head of a family. The same section also authorized the President of the United States to select *twenty* sections for the benefit of the orphan children of the Creeks, which lands so selected were to be divided, retained, or sold for their benefit, as the President should direct. These were in substance the provisions of the *treaty*. The further facts shown in the record are stated in the opinion of the court as follows:

From the evidence it appears that the plaintiff claimed under the first, and the defendants under the second, clause of the second article of the treaty; that the plaintiff was the head of a family within the description, and had complied with all the requisites of the treaty, had selected the tract whereon her improvements were, where she resided before, at the time of the treaty, and until her expulsion therefrom by military force, on the frivolous pretense that she was not the head of a family, her children having married and left her, and none but her grandchildren lived with her. The defendants claim under the second article, relating to orphans' selections, by two patents, dated in 1837, each for a quarter section, being the two halves of the half section selected by the plaintiff, which patents

issued pursuant to a sale made by the agent appointed by the President, and affirmed by him in November, 1836, *five months before the expiration of five years from* the ratification of the treaty, and while the land was expressly reserved from sale. The defendants gave no other evidence of title.

Upon the above state of facts, the court continued as follows:

This sale was a direct infraction of the solemn engagements of the United States in the treaty. Though approved by the President, if the plaintiff had previously selected it according to the stipulations of the treaty, in such case the sale was a nullity, for the want of any power in the treaty to make it. The President could give no such power or authorize the officer of the land office to issue patents on such sales; they are void as sales, by reason of their collision with the treaty. The only remaining inquiry is into the plaintiff's title. No other objection has been made to it than the refusal of the locating agent or his deputy to recognize her right under the treaty, or to set apart the land so located by her opposite her name on the roll, as in other cases, solely for the reason he assigned. We cannot seriously discuss the question, whether a grandmother and her grandchildren compose a family, in the meaning of that word in the treaty; it must shock the common sense of all mankind to even doubt it. It is incompatible with the good faith and honor of the United States, and as repugnant to the Indian character, to suppose that either party to the treaty could contemplate such a construction to their solemn compact as to exclude such persons from its protection and authorize any officer to force her from her home into the wilds of the far west. Such an exercise of power is not warranted by the compact, and the pretext on which it was exercised is wholly unsanctioned by any principle of law or justice.

Having a right *by the treaty* to select the land of her residence, having selected and been driven from it by lawless forces, her title remains unimpaired. She has not slept on her rights, but from 1832 to 1837 has made continuous and repeated applications to the Government officers to assert

her rights to said land, and through them to the Government itself in 1837. She has never abandoned her claim, but has insisted on her rights under the treaty.

In our opinion, the plaintiff not only has a right to the land in question *under the treaty*, but one which it protects and guarantees against all the acts which have been done to her prejudice.

2 Howard, 581, 590.

To the same effect, and asserting the same principles, are the following authorities:

Wray *v.* Haya-pa-nubby, 10 Smede & M., 452, 461.
Cornett *v.* Winston's Lessee, 2 Yerg., 143.
Grubbs *v.* McClatchly, 2 Ibid., 432, 433.
Jones' Lessee *v.* Evans, 5 Ibid., 323.
Jones & Parsons' Heirs *v.* Inge & Mardis' Heirs, 5 Porter, (Ala.,) 329.
Fipps *v.* McGehee *et al.*, 5 Ibid., 413, 427.

It is clear from these authorities, therefore, that the rights of the said reservees—the said thirteen hundred and forty-six Choctaw heads of families, and their children—were *treaty rights*, which were complete and perfect without any legislation on the part of Congress. The right became perfect and complete upon the performance of the condition required by the treaty. The condition was performed on the 24th day of February, 1836; and, subsequent to that date, the rights of the said reservees above specified were perfect contract rights, guaranteed by treaty stipulations. It is declared that the rights which were thus made perfect and complete were released, relinquished, and completely satisfied by other proceedings and by other means than those provided by the treaty; that this result has been accomplished by action taken under the authority of acts of Congress, and that the "*rights and claims*" of *eleven hundred and fifty-five* of said Choctaw heads of fam-

ilies were compromised, satisfied, and released by reason of such action.

The object and purpose of that legislation, as well as the action taken in pursuance thereof, therefore became important subjects of consideration.

Act of May 9th, 1836.

The first statute passed upon this subject was that of the 9th of May, 1836 (5 Stats. at Large, 131, 132). Previous to the passage of this act, to wit, on the 26th of June, 1833, (finding V,) the Secretary of War appointed George W. Martin to make selections of the locations of the tracts of land granted to the Choctaws by the fourteenth, fifteenth, and nineteenth articles of the treaty of September 27th, 1830, concluded at Dancing Rabbit Creek, and empowered him to employ an interpreter, &c., and to make locations of lands, as fully set out in the official instructions in the Record, pages 58 to 62. This act of Congress directed the withholding from public sale, until the 1st of December, 1836, such lands as said locating agent had conditionally located in favor of persons claiming reservations under the fourteenth article of said treaty of 1830. But it expressly provided "that nothing herein contained shall be taken or construed as indicating any intention on the part of Congress to confirm said claims."

The selection of reservations made under the supervision of this agent were of no practical benefit to the reservees, because both the President and the Secretary of War had informed him that "these locations, it must be understood, are *contingent, and will be complete only in the event of their being confirmed* by Congress."

Record, p. 62.

It is difficult to understand why the President should have directed *these* locations or *any* locations made for

the benefit of these Indians under this treaty, to depend for their validity upon the action of Congress. The *treaty* was sufficient to execute itself, if the appropriate machinery for that purpose had been put in motion by the President, upon whom the duty of executing the treaty devolved. *All* that the *treaty* required a reservee under the *fourteenth* article to do, in order to entitle him or her to the reservation provided in that article, was to prove that the person desiring the reservation was "the head of a Choctaw family," and that such person had, within six months from the date of the ratification of the treaty, declared his or her intention to remain in the State of Mississippi or Alabama and become a citizen. These facts being established, *the treaty itself* made the grant of a *reservation*, and it needed nothing to make the grant complete except to *select the reservation*. The duty of making and marking the reservation was a duty wherewith the Government was charged, in connection with the Indian, *who had the right to make such selection as he desired*. If they desired to make a reservation which would include the *improvement* upon which the Indian resided at the date of the treaty, it was his right to do *that;* and if he desired to select another reservation and abandon his improvements, he had an undoubted right to do so. *These were his clear and well-defined rights under the treaty*. The statutes passed by Congress attempted to abridge and take away those rights rather than to provide for securing to the reservee the rights guaranteed by the treaty.

The Act of March 3d, 1837.

The act of March 3d, 1837, (5 Stats. at Large, 180, 181,) is the first statute passed by Congress having for its object the ascertainment of the extent of the obligations of the United States to the individual citizens of the Choctaw Nation under the *fourteenth* article of the treaty of 1830.

When this statute was enacted, the reservees under that article had become entitled to grants *in fee-simple* if they had complied, or had been prevented by the agents of the United States from complying, with the requirements of that article. It was passed, it may be assumed, therefore, for the purpose of enabling the United States to ascertain for its own information the extent of its obligations under that article of the treaty. The grants *in fee-simple*, provided by that article, were then deliverable, and it was important to the United States to know how many such grants were to be delivered.

The first section of that act, therefore, provided for the appointment by the President and Senate of three commissioners, to meet in Mississippi, at a time named by the President, who were to proceed to ascertain the name of every Choctaw head of a family, at the date of said treaty of 1830, who had not already obtained a reservation under the treaty, and who could show that he had complied, or offered to comply, with the requisites of the fourteenth article, so as to entitle him or her to a reservation. Also to ascertain the number and names of unmarried children of said heads of families who formed part of the family and were over ten years of age; and likewise the number and names of the children of such heads of families under ten years of age; these to be reported to the President, and by him laid before Congress; such report to show the names of such Indians, the different sections of land to which the heads of families were entitled, together with the opinion of the commissioners, and whether any part of the lands had been sold by the Government, *and the proofs applicable to each case.*

The second section required the commissioners to take an oath of office.

The third section provided for a secretary to record the proceedings of the board, "as well as all depositions and

other papers filed before said board," and the secretary was required to take an oath of office.

The fourth section provided "that upon the request of the commissioners it shall be the duty of the United States District Attorney for the State of Mississippi to attend said board, and give his assistance in procuring the attendance of witnesses, and his aid and advice in their examination, the better to enable the commissioners to ascertain the facts correctly in each case."

The sixth section is as follows:

SECTION 6. That said commissioners shall have full power to summon and cause to come before them such witnesses as they may deem necessary, and to have them examined on oath; and if any witness shall testify falsely, with an intention to mislead said commissioners, such witness shall be guilty of willful and corrupt perjury, and shall, upon conviction before any jurisdiction having cognizance thereof, suffer the punishment by law inflicted on those guilty of that offense.

The seventh section of the statute provides that nothing in the act should be a sanction of the contingent locations made by Martin for such Indians as were supposed to have been entitled to other lands, which had been sold by the United States, such contingent locations being declared without legal authority. And the seventh section concludes in these words:

It being the true intent of this act *to reserve to Congress the power of doing that which may appear just when a correct knowledge of all the facts is obtained.*

If any proposition of law is thoroughly settled by this court, it is that which asserts the principle that rights secured by *treaty stipulation*, which are PROPERTY, and not POLITICAL, RIGHTS, are not subject to the interference of Congress, and do not depend for their vitality or existence

upon the will or action of the *legislative* branch of the Government.

The Kansas Indians, 5 Wall., 737.
Wilson *v.* Wall, 6 Wall., 89.
Felps *v.* Reichart, 6 Ibid., 160.
Holden *v.* Joy, 17 Ibid., 211–217.
Crews *et al. v.* Burcham, 1 Black., 356.
Mitchell *v.* United States, 9 Peters, 711, 749, 755.
United States *v.* Reese, 5 Dillon, 405–409.
United States *v.* Brooks, 10 How., 460.
Doe *ex dem.* Mann *et al. v.* Wilson, 23 Ibid., 461.

ACT OF FEBRUARY 22D, 1838.

The next of these acts, which it is held by the Court of Claims were acts of compromise with the appellant, was that of the 22d of February, 1838 (5 Stats. at Large, 211).

This act is amendatory of that of the 3d of March, 1837 (*supra*), and in its first section provides that the commissioners appointed under that act, or a majority, should have power to adjourn their sessions to such place or places within Mississippi as, *in their judgment, the interests of the Government might require.*

The second section provided that in case of the death or resignation of a commissioner the remaining two should have power to act.

The third section gives to the commissioners "all the powers of a court of record, for the purpose of compelling the attendance of witnesses, administering oaths touching matters depending before them, preserving order, and punishing contempts; and shall have power to make all needful rules for the regulation of the proceedings before them, as well as to employ one or more interpreters, and one or more agents to collect testimony for the United States."

The fifth section continues the act in force until the first day of August, 1838.

The seventh section provides "that nothing contained in this act, or the act which this is intented to amend, shall be so construed as to embrace the claim of any Indian or head of a Choctaw family, who has removed west of the Mississippi river."

The eighth section provides, in substance, that if it be proved that any claimant has attempted, or shall attempt, to substitute the child of another Indian for his own, or shall attempt by his testimony to substitute for the child of any other claimant the child of another Indian, the name of such claimant so attempting to make such substitution shall be striken from the list of claimants. This act, like that of March 3d, 1837, was for the protection of the interests of the Government.

It is apparent from both of these statutes that they were not enacted out of solicitude for the rights of the appellant.

The above acts were productive of no practical benefit or results to the appellant; but the investigations of the commissioners appointed under them showed that there were *thirteen hundred and forty-nine* Choctaw heads of families who asserted their right to reservations for themselves and children under said article. The work of examining, deciding, and reporting upon the extent and validity of the claims asserted and presented to the commissioners under these acts was not completed when their official duties terminated by the expiration of the terms of service attached to their office.

Act of August 23d, 1842.

The next statute upon this subject is that enacted August 23d, 1842 (5 Stats. at Large, 514).

This statute is by the Court of Claims assumed to have a most important effect upon the rights of the appellant, and to be conclusive of the rights of those Choctaws whose claims were examined, adjusted, allowed, and settled as provided in said act.

The first section of this act continues in force, so far as not repealed by the provisions of this act, the provisions of the acts of 1837 and 1838 above named, "until the powers conferred by this act shall be fully executed," subject to congressional power of repeal. It also extends the powers of said commissioners to claims arising under the nineteenth article and the claims arising under the supplement to the treaty, to wit, the supplementary treaty of the 28th of September, 1830,(7 Stats., 340,) being one providing for reservations to individuals therein named.

The second section provides for the commissioners issuing subpœnas for witnesses, with the same effect as if issued by courts of record, to be executed by the marshal or sheriff or other officers designated by the commission; but the proviso provided against reviving the power given by the act of 1837 for employing the district attorney of Mississippi.

The third section contains the most important provisions of this statute; and those parts of it which are material to this discussion are condensed and the substance thereof stated. It undertakes to define what conditions precedent were created by the fourteenth article of the treaty of 1830, in order to entitle the Choctaws to claim a right to lands under that article, and it defines these conditions in substance thus:

FIRST. That the claimant did signify to the agent, either in person or by an authorized and specially-directed agent, the claimant's intention to become a citizen, and did this within six months from the treaty's ratification, and had the claimant's name, within said time, enrolled on the register of said United States agent acting for that purpose.

SECOND. Or, in the alternative, shall prove to the *entire* satisfaction of the commissioners and Secretary of War that the claimant did signify his intention within said six

months, and if his name was omitted, that it was omitted by the agent.

THIRD. That the claimant did, at the date of said treaty, *have and own an improvement in the Choctaw country*.

FOURTH. That the claimant so owning said improvement, at the date of the treaty, did reside upon such identical improvement, or a part of it, for five continuous years after date of treaty—this unless it should be proved that such improvement was, before the 24th of February, 1836, disposed of by the United States, and that by such disposition the claimant was dispossessed.

FIFTH. That it shall be proved to the "entire satisfaction of said commissioners, and of the Secretary of War, that the claimant did not receive any other grant of land under any other article of the treaty."

SIXTH. That it should be made to appear, in like manner, that the claimant did not remove to the Choctaw country west of the Mississippi, but continued to reside within the country ceded by the Choctaws to the United States by said treaty.

This section 3 further provides as follows:

It shall be the duty of said commissioners, if all and each of the above requisites shall be made clearly to appear to their satisfaction, and the Secretary of War shall concur therein, to proceed to ascertain the quantity of land to which said Indian, by virtue of the fourteenth article of said treaty, is entitled to, which, when ascertained, shall be located for said Indian, according to sectional lines, so as to embrace the improvement, or a part of it, owned by said Indian at the date of said treaty; and it shall be the duty of the President of the United States to issue a patent to said Indian for said land, if he or she be living, and if not, to his or her heirs and legal representatives; and in like manner shall the commissioners aforesaid ascertain the quantity of land granted by said article to each child

of said Indian, according to the limitations contained in said article, and locate said quantity for said children contiguous to and adjoining the improvement of the parent of such child or children; and the President shall issue a patent for each tract of land thus located to said Indian child, if living, and if not, to the heirs and legal representatives of such Indian child. *But if the United States shall have disposed of any tract of land, to which any Indian was entitled, under the provisions of said fourteenth article of said treaty, so that it is now impossible to give said Indian the quantity to which he was entitled, including his improvements, as aforesaid, or any part of it, or to his children, on the adjoining lands,* THE SAID COMMISSIONERS SHALL THEREUPON ESTIMATE THE QUANTITY TO WHICH EACH INDIAN IS ENTITLED, AND ALLOW HIM OR HER, FOR THE SAME, A QUANTITY OF LAND EQUAL TO THAT ALLOWED, TO BE TAKEN OUT OF ANY OF THE PUBLIC LANDS IN THE STATES OF MISSISSIPPI, LOUISIANA, ALABAMA, AND ARKANSAS, SUBJECT TO ENTRY AT PRIVATE SALE; AND CERTIFICATES TO THAT EFFECT SHALL BE DELIVERED, UNDER THE DIRECTION OF THE SECRETARY OF WAR, THROUGH SUCH AGENT AS HE MAY SELECT, NOT MORE THAN ONE-HALF OF WHICH SHALL BE DELIVERED TO SAID INDIAN UNTIL AFTER HIS REMOVAL TO THE CHOCTAW TERRITORY WEST OF THE MISSISSIPPI RIVER.

The same section then authorizes the commissioners to ascertain what Choctaws, if any, had relinquished, or *offered* to relinquish, reservations to which they were entitled under the nineteenth article of said treaty of 1830, or whose reservations had been sold by the United States; and to determine the quantity to which such nineteenth-article claimants were entitled; and provides that the quantity of land which should be allowed the claimants, on the extinguishment of their respective claims, should be at the rate of two-fifths of an acre for every acre to which the claimant was entitled, such lands having been estimated under this article at fifty cents per acre; but provides that no claim shall be allowed under this nineteenth article in favor of any claimant whose name does not appear on Armstrong's list of claimants as returned to the War Department in

January, 1832, and which claimant does not appear, from these registers, to be entitled under the nineteenth article.

The fourth section of this act requires the commissioners, within two years from commencing their duties, and as often as the President might direct, to *report to the President* their proceedings in the premises, "with a full and perfect list of names of the Choctaws whom they shall have determined to be entitled to reservations under this act; the quantity of land to which each shall be so entitled; the number of claims which can be located according to the provisions of the 'fourth' [should be third] section of the act, and such as cannot be located according to the provisions of the fourth [third] section of the act." Such section 4 also terminates the powers of the commission within two years from its first organization, and that the President may sooner terminate them.

The fifth section authorizes the commission to determine the rights of the claimants under the above-named supplementary treaty of September 28th, 1830.

The sixth section of this act authorizes the President, in case of his approval of the determination of the commissioners in favor of claims under said treaty, *to cause a patent to be issued to the claimant or his representatives, as provided in the fourth (should be third) section of the act, for the quantity to which the claimant shall be decided to be entitled to*, in full satisfaction of such claim, provided such determination was made by *adhering in every instance* to the *requisites* contained in the fourth (third) section of the act; and provided, also, that the said claims, or either of them, cannot now be located according to the provisions of the fourth section of the act.

The seventh section of the act provides for keeping distinct accounts of certificates issued in satisfaction of claims under the act, and accounts of expenses, &c.

The eighth section forbids the allowance of any claim in favor of a white man having an Indian family.

The ninth section prohibits any claim under the fourteenth article, where the commissioners are satisfied that such claim had, previous to the expiration of five years from said treaty, been assigned, either in whole or in part; and in case of partial assignment or agreement, therefor, the same shall be allowed only so far as the original claimant was the *bona-fide* proprietor thereof at the expiration of said five years.

The tenth section bars any claim not presented to the commissioners within a year after the approval of the act, to wit, the 23d of August, 1842.

The only substantial and material difference between this statute and the acts of March 3d, 1837, and February 22d, 1838, is that which makes provision for the *satisfaction* of those claims which should be allowed by the commissioners under this act, or under the act of March 3d, 1837, when it should be found that the United States had "*disposed of any tract of land* to which any Indian was entitled under the provisions of said fourteenth article of said treaty," and that by reason thereof "*it is now impossible to give said Indian the quantity* [*of land*] *to which* HE WAS ENTITLED, *including his improvements, or any part of it.*"

The claims adjusted and allowed under this act, as well as those examined and allowed by the commissioners under the act of March 3d, 1837, were subject to the above provisions in regard to the issuance of certificates or scrip *in lieu of the reservations which had been sold by the United States.* It is important to understand just what this proposition contained in the *third* section of the act of 1842 really was, so far as it was *an offer of compromise*, or an *agreement* to accept something by way of a substitute for *the admitted right*, which would result in and make complete a legal "ACCORD AND SATISFACTION." The Court of Claims finds, as has already been stated, that there were thirteen hundred and forty-six of these reservees who were entitled to the lands provided by the treaty, because they

had performed all the conditions upon which their rights to the reservations depended. (Findings XIII and XIV, Record, pp. 71, 72.) This statute, instead of securing to the said reservees the homes and lands which they had acquired the right to have, *required them to accept* certificates or scrip which could only be used in the location or entry of any unoccupied lands, subject to entry at private sale, in the States of Alabama, Arkansas, Louisiana, and Mississippi.

The language of this act, to the Choctaw people, in substance, was: "The United States concedes the right of the *fourteenth-article reservees* to have the lands which the treaty granted, if they perform the conditions of the treaty and the superadded conditions of this statute; but it is impossible, in consequence of the *unauthorized sale*, by the United States, of the *reservations* to which the Choctaws were entitled, to give them the *reservations* provided in the treaty, although the *reservees* complied with conditions which the statute, and not the treaty, imposed. It was a great wrong to permit you to be driven from your homes by the agents of the United States, and by their willing allies, the white settlers, who came to their assistance before the time had elapsed in which they might lawfully enter the ceded territory. We have violated every provision of the *fourteenth* article of the treaty intended for your benefit. Our agent, who ought to have registered the names of your families and their children, was faithless to every official duty, where your rights were concerned. We sold your homes from you, and permitted them to be taken by white settlers, although you had declared your intention to remain and become citizens of the States. You remained, or attempted to remain, on your lands for *five* years, and were entitled to have grants therefor *in fee-simple*. Those grants the United States is unable to secure to you, because it has sold them in contempt of your rights, although you have complied with every condition upon

which your right to have the grant was made to depend. The United States will, therefore, give you certificates or scrip, with which you can procure other unoccupied lands in the States of Mississippi, Louisiana, Alabama, and Arkansas. These certificates, or this scrip, are a very inadequate compensation to you for the losses you have sustained by being driven from your homes, *but it is all the United States will give. This indemnity you must* accept, because the United States cannot now give you the lands to which you are entitled; but even this indemnity, inadequate as it must be admitted to be, you cannot receive, unless you will immediately remove to the Choctaw territory west of the Mississippi river." This is the obvious meaning and intention of that provision which *prohibits* the delivery, to the Choctaws entitled thereto, of "ONLY ONE-HALF" of the certificates or scrip provided by said act, "UNTIL AFTER THEIR REMOVAL TO THE CHOCTAW TERRITORY WEST OF THE MISSISSIPPI RIVER."

NO OPTION ALLOWED IN REGARD TO RECEIVING SCRIP.

These reservees were permitted no option in regard to whether they would, or would not, accept these certificates in lieu of, and in satisfaction of, the reservations, which these certificates admitted they were entitled to have granted *in fee-simple.* It was not even "Hobson's choice," so far as the reservees to whom these certificates were issued were concerned. These certificates "*shall be delivered*" under the direction of the Secretary of War, "but" not more than one-half thereof shall be delivered to the reservee "until after his removal west of the Mississippi River," are the explicit directions of this statute. *Coercion,* rather than *freedom of action,* is the expressive language of that provision which proposes to retain in the possession of the United States one-half of that nondescript piece of property which is proposed to be given *in lieu of*

reservations which the United States has sold for money, and is, therefore, unable to grant *in fee-simple*, as required by the treaty. If there is anywhere in this statute any section, sentence, or phrase which reserved to the Choctaws any option, *any freedom of choice*, either in respect of the *mode* provided for the adjustment of their claims, or the manner in which compensation for reservations which the United States had sold, and put the proceeds of such sales in its Treasury, it is not contained in that section which provided for the delivery of "scrip" in lieu of those grants *in fee-simple* which the United States had agreed should be delivered on the 24th day of February, 1836. The acts of 1837, 1838, and 1842 are *in pari materia*. They were all acts passed for the purpose of ascertaining the extent of the liabilities of the United States to the appellant under the *fourteenth* and *nineteenth* articles of the treaty of 1830. They were enacted because the United States had not fulfilled its obligations under those articles of that treaty. They were enacted in pursuance of a policy adopted by the United States *to remove from the State of Mississippi those Choctaw heads of families and their children* who were entitled to reservations and citizenship under the *fourteenth* article of said treaty. This is evident from the fact that Congress, subsequent to the expiration of February 24th, 1836, passed laws which provided for the further emigration of the Choctaw Indians residing in the State of Mississippi to the west of the Mississippi River.

The act of July 2d, 1836, appropriated thirty thousand dollars for this purpose.

5 Stats. at Large, 76.

The act of March 3d, 1843, appropriated sixty-seven thousand four hundred and ninety dollars "for the removal of the Choctaws to the west of the Mississippi."

5 Stats. at Large, 612.

The Choctaws had agreed, in the *third* article of the treaty, that of those who did not elect to remain and become citizens, "one-half shall remove and depart from the ceded territory during the fall of 1831 and 1832," and "the residue to follow during the fall of 1833." The time for the general removal of those who did not elect to remain had expired, and there was no need for further appropriations for the removal of those who had elected to remain and become citizens, except upon the theory that "*the policy of the Government" in respect of those who had acquired the rights guaranteed by the fourteenth article had changed, and all who had not secured reservations which the law would recognize and protect were to be required and forced to remove from the State of Mississippi.* It is upon this theory alone that the provision which required the issuance of scrip *in lieu of reservations* was inserted in the act of 1842. If it had been the purpose of the United States to secure and protect those who had elected to remain and become citizens, it would have been an easy matter to provide that those who had elected to remain should have a right to select their reservations within the ceded territory, of an average quality and value with that embraced in the whole cession, or equal in value to that which the reservees occupied at the date of the treaty, and from which they had been expelled, either by the agents of the United States or by the white settlers. If *forced* removal of those who had elected to remain was not the purpose and policy of the act of 1842, why provide that one-half of the certificates to be issued *in lieu of reservations* should not be delivered to the reservee "UNTIL AFTER HIS REMOVAL TO THE CHOCTAW TERRITORY WEST OF THE MISSISSIPPI RIVER?"

Those who had remained desired to become citizens. They had continued to assert that purpose during all the years that elapsed between the date of the treaty and the passage of these acts of Congress. This fact the Court

of Claims concedes in the *ninth* finding, where, in respect to those who had elected to remain and become citizens, the following facts are stated:

After the 24th of August, 1831, the agents of the United States—Armstrong and Lane—insisted that those whose names were not registered should go west, and if they did not go, soldiers would be sent to drive them out; that they would take their children from them, *and many other threats were made by them.*

At the time of the report of the commissioners, under the acts of 1837 and 1838, to wit, on the 31st day of July, 1838, about 5,000 remained in Mississippi. Notwithstanding the efforts of the removing agent of the Government to remove them, they remained, asserting their intention to do so, and claiming the benefit of the fourteenth article of the treaty of 1830. It was the intention of those remaining east of the Mississippi to take the benefit of the fourteenth article of the treaty.

Record, p. 67.

It is to be observed that these acts, which appropriated further sums of money "for the purpose of facilitating the emigration of the Choctaws from the State of Mississippi," were passed about the time when this change of policy was to be made effectual by means of the acts of 1837, 1838, and 1842. A condition of unrest, of want, and despair had overtaken these people in consequence of the wrongs which the United States had inflicted, and had permitted others to inflict, upon them, and it was evidently believed that "*the policy of removal*," with respect to these Indians, could now be successfully accomplished. The report of the commissioners under the act of 1837 (made on the 31st of July, 1838) portrays the helpless condition of this people when "*the policy of removal*" was to be enforced upon them so forcibly that it properly finds a place here. The language of the commissioners is as follows:

There are many cases, also, in which claimants have removed from the lands occupied by them at the time of the

treaty in consequence of the settlement of the whites in their neighborhood. This, and the consequences naturally resulting from it, and the proofs offered of its effects upon their minds, have induced the board to recommend such cases to Congress for allowance.

The Choctaw Indians are shy and reserved in their intercourse with the whites, and do not readily mix with them. IT IS PROVED IN A GREAT NUMBER OF CASES THAT THEY HAVE BEEN MOST WANTONLY ABUSED AND ILL-TREATED BY THEM, and that they could not live in peace in the same neighborhood. The large stocks of cattle and hogs introduced by the white settlers destroyed their crops, and their houses and cabins were torn down, burned, or taken possession of by them when they left home on their necessary hunting expeditions or to seek employment in picking cotton, &c. UNDER THESE CIRCUMSTANCES THEY WERE COMPELLED, IN A GREAT NUMBER OF CASES, TO REMOVE. It is in proof, also, that many removed in consequence of reports circulated among them that the lands occupied by them had been sold by the Government, and when it was impossible for them to ascertain the truth or falsehood of such reports. THEY WELL KNEW, HOWEVER, FROM BITTER EXPERIENCE, THAT, WHETHER TRUE OR FALSE, THEY WERE AT THE MERCY OF THEIR WHITE NEIGHBORS. THE INSTANCES ARE NOT RARE, AS THE EVIDENCE ABUNDANTLY SHOWS, IN WHICH FAMILIES HAVE BEEN WANTONLY DRIVEN FROM THEIR HOMES, AND HAVE FOR SEVERAL YEARS BEEN WANDERERS, LIVING ABOUT IN ALL SEASONS IN OPEN CAMPS, AND SEEKING A PRECARIOUS SUBSISTENCE, WHICH SCARCELY SUFFICED TO KEEP THEM ALIVE.

Finding VIII, p. 66.

A people thus situated are hardly in that condition of independence which would justify the author of their misfortunes to propose to them *a compromise of existing rights, or force upon them a settlement of acknowledged and admitted rights, which even the Court of Claims concedes to have been harsh, unjust, and unconscionable.* That court regrets that it cannot find in the treaty of 1855 that which would destroy the legal effect of what was done under these acts of Congress, "*because of the manner of the execution of that*

portion of the treaty of 1830 *which provided for individual Indians!*"

ACT OF MARCH 3D, 1845.

The next act, in the series of statutes, by means of which the *compromise* and *settlement* of the disputed claims of the appellant are alleged to have been effected, is that of March 3d, 1845 (5 Stats. at Large, 777). It is in substance provided in that act that the scrip awarded, or to be awarded, to the Choctaws under the act of 23d of August, 1842, (*supra*,) which was not deliverable east, (to wit, one-half,) should not be issued or delivered in the west, "but the amounts awarded for land on which they resided, *but which it is impossible for the United States now to give them*, shall carry an *interest of five per cent.*, which the United States will pay annually to the reservees under the treaty of one thousand eight hundred and thirty, respectively, or to their heirs and legal representatives, *forever*, estimating the land to which they may be entitled at one dollar and twenty-five cents per acre: *Provided, further*, That so much of the law of twenty-third August, one thousand eight hundred and forty-two, as is inconsistent herewith, is hereby repealed."

It would be supposed that when provision was made for funding that *one-half* of the scrip which was not deliverable "until after his [the Indian's] removal to the Choctaw territory west of the Mississippi River," that the other one-half of the scrip, which should have been delivered to the reservees in the State of Mississippi, would have been so delivered. *This, however, the United States refused to do.* It funded that one-half which was deliverable west, and then refused to deliver the other one-half until after the Indian had removed west. Thus the reservees, for whom the United States was by means of these statutes making *such considerate provision*, were to have *nothing* out of their lands from which they would be able to provide themselves

with those necessary articles which were indispensable to their comfort in that removal which the United States was now about to enforce against those who had the right to remain in Mississippi, and be protected in their homes as well as in their rights of citizenship. There does not seem to be anything in this act to which the appellant asserted or to which it was required to give assent. It was the act of the United States alone, and it is immaterial whether it was passed in order to protect the Choctaws from the greed and rapacity of those who were getting possession of their scrip for an insignificant consideration, or for the purpose of bringing to bear upon them an additional force which should accelerate removal, *by withholding the entire quantity of scrip until the reservee "had removed to the Choctaw territory west of the Mississippi River."* There was nothing in this act which required either assent or action on the part of the reservees whose scrip was to be funded under its provisions. The act directed that the one-half of said scrip which was deliverable west should be funded at an annual interest of five per cent., and no protest or objection on the part of the reservee could have prevented the execution of the provisions of the statute or the funding of the scrip. The law does not require a party to make useless and idle protests in order to protect his rights. If the protest would have been unavailing to the reservees whose scrip was to be funded under the provisions of this statute, then they were not required to protest against its terms; and it is obvious that no protest on the part of the reservees to whom scrip had been allowed would have prevented the execution of the provisions of this statute, because its provisions were absolute and mandatory.

Act of July 21st, 1852.

The concluding act, by means of which the Court of Claims assumes that the compromise, accord and satisfaction, and *estoppel*, in respect to the reservees who were al-

lowed scrip, became conclusive and complete, was that of July 21st, 1852 (10 Stats. at Large, 19), which provides as follows:

For interest on the amounts awarded Choctaw claimants under the fourteenth article of the treaty of Dancing Rabbit Creek of twenty-seventh of September, 1830, for lands on which they resided, *but which it is impossible to give them*, and in lieu of the scrip that has been awarded under the act of twenty-third of August, eighteen hundred and forty-two, not deliverable east, by the third section of said law, per act of third March, eighteen hundred and forty-five, for the half year ending thirtieth of June, eighteen hundred and fifty-two, twenty-one thousand eight hundred dollars: *Provided, That after the thirtieth day of June, eighteen hundred and fifty-two, all payments of interest on said awards shall cease*, and that the Secretary of the Interior be, and he is hereby, DIRECTED TO pay said claimants the amount of principal awarded in each case respectively, and that the amount necessary for this purpose be, and the same is hereby, appropriated, not exceeding eight hundred and seventy-two thousand dollars: *Provided, further*, That the final payment and satisfaction of said awards shall be first ratified and approved, as a final release of all claims of such parties under the fourteenth article of said treaty, by the proper national authority of the Choctaws, in such form as shall be prescribed by the Secretary of the Interior.

The *release* which was executed by the Choctaw National Council, in pursuance of the said statute, on the sixth day of November, 1852, after reciting the provisions of the statute, concluded as follows:

Now, be it known, That the said general council of the Choctaw Nation do hereby ratify and approve the final payment and satisfaction of said awards agreeably to the provisions of the act aforesaid as a final release of the claims of such parties under the fourteenth article of said treaty.

Finding XXII, p. 75.

There are four things to be observed in regard to the provisions of this statute:

1st. It appropriated the semi-annual interest due on the funded scrip for the six months ending the 30th of June, 1852.

2d. It *directed that "all payments of interest on the said funded scrip should cease"* after the said date.

3d. It *directed* the Secretary of the Interior to pay the said reservees, whose scrip had been funded under the provisions of the act of March 3d, 1845, "THE AMOUNT OF PRINCIPAL AWARDED IN EACH CASE RESPECTIVELY."

4th. It REQUIRED "the proper national authority of the Choctaws" to first ratify and approve the payment and satisfaction of said awards of funded scrip, as a FINAL RELEASE of all claims of such parties under the *fourteenth* article of the treaty of 1830.

It is obvious that the only act the appellant was required to perform under the provisions of this statute was to ratify and approve the payment DIRECTED to be made as a release of the claims of said reservees whose scrip was to be paid and satisfied under the provisions of this statute. There seems to have been left to the appellant no option in regard to the acceptance of the payment of the amount necessary to pay and cancel this scrip, or in regard to the execution of the release which was to precede its payment.

This statute came to the appellant with the declaration *that all payments of interest* on the scrip which had been funded under the act of March 3d, 1845, should cease on the 30th of June, 1852. The act of 1845 had said to these reservees that the United States would pay interest on this funded scrip at the rate of five per cent. per annum FOREVER. These reservees were entitled to receive *annually*, as interest on the funded scrip, *forty-three thousand six hundred dollars*, subsequent to the date of the passage of the funding act of 1845. This was about *thirty-eight dollars annually* to

each Choctaw head of a family. The act of 1852, therefore, said to these reservees that this source of income and revenue must cease on and after the 30th of June, 1852. The Secretary of the Interior was *directed* to pay the principal of the sum which had been funded under the act of 1845, upon the execution of the release required by the act of 1852. The payment of interest on the funded scrip was to cease whether the release was executed or not. If the act of March 3d, 1845, was an agreement to fund one-half of the scrip issued and to be issued under the act of 1842, *and to pay interest thereon at the rate of five per cent. per annum*, FOREVER, then the act of 1852 was a repudiation of that agreement, because it directed that no further payments of interest should be made after the 30th of June, 1852; and this without regard to the execution of the release required by the act of July 21st, 1852, or the assent of the appellant. Thus the Choctaw National Authorities, which were required to execute this release, were admonished by this statute that, if they refused or neglected to execute the required release, they were depriving the eleven hundred and fifty-five families for whom they were acting of the principal sum to which they were entitled, which principal sum the United States proposed thereafter to retain, without the payment of interest. They were given to understand that the United States had repudiated the agreement to pay interest on the funded scrip FOREVER, and would thereafter pay no interest. The threat of the United States to these reservees, as expressed in the act of 1852, was, "execute the release required by that act, or, you shall have neither principal nor interest of the funded debt."

In the face of such facts as these the Court of Claims is moved to use the following language:

The release under the act of 1852 was executed by the proper authorities of the Choctaw Nation, and the findings do not show that, in accepting the payment of the $872,000,

such authorities, in any way, were induced to accept the same by any misrepresentation or illegal procurement of the defendants. It may have been that the necessities of the Nation made it almost imperative that the appropriation of the defendants should be accepted; but the condition and necessities of the parties have never been held sufficient in law to annul and abrogate their agreements. (French *v.* Shoemaker, 14 Wall., 314.) The payment of the $872,000 was to be made on the condition that the Nation execute a release for claims under the fourteenth article, those claims being the original consideration of the agreement to pay in the form of an annuity; and if the Nation did not desire the payment of the annuity itself, it should have refused to accept the same on the conditions provided for by the act of 1852.

Record, p. 113.

It may not have been "*misrepresentation*" or "*illegal procurement*" for the United States to require the execution of this release as a condition precedent to the payment of the principal sum, since it was done under the authority of the statute; but the *morality* of procuring the execution of a release by the use of such means is not such as ought to commend itself to courts who are inspired by a high sense of justice, or are jealous of the National honor, in its dealings with these helpless and dependent people.

The case of French *v.* Shoemaker, which the court cites in support of the proposition which it asserts in the above-quoted paragraph, is not an authority by which either the payment made, or the release executed under the requirements of the act of 1852, can be sustained.

In that case the suit was instituted upon an agreement made by the appellant, and certain other persons therein named, in regard to the operation, by "The Washington, Alexandria, and Georgetown Railroad Company," of the railroad between Washington, D. C., and Alexandria, Va., which had been built by "The Washington and Alexandria Railroad Company," *and for a division of the stock of the new*

company between French, who was the appellant, and the other parties named in the agreement. The bill was filed by Shoemaker to enjoin French from acting as President of the old company or from exercising any control or authority over the said railroad, and was based upon the stipulations of the above agreement. French filed an answer and cross-bill, in which he alleged, amongst other things, that the complainant, with the other parties named in the agreement, "assailed, importuned, and *threatened* him, and that, being greatly pressed *by his necessities*, he was at length forced to sign the said contract."

This court, Mr. Justice Clifford delivering the opinion, stated some significant facts, which so widely distinguish that case from the one under consideration that a mere statement of them will be sufficient to show how entirely the case relied on by the court fails to sustain its legal proposition. The following is the language of the court:

1st. "Fraud is undoubtedly charged in the answer, but the charge is wholly unsupported by any satisfactory proof, and the charge is virtually abandoned by the cross-bill, in which it is alleged that the respondent, NOTWITHSTANDING THE OPPRESSION AND INJUSTICE WHICH COMPELLED HIM TO EXECUTE THE AGREEMENT, WAS WILLING AND ANXIOUS, AND FOR A LONG TIME CONTINUED TO DEMAND, THAT THE SAME SHOULD BE CARRIED OUT ACCORDING TO ITS SPIRIT AND INTENT."

14 Wall., 329, 330.

There is not, in the record in the case under consideration, any evidence that the appellant was ever "willing" or "anxious," or ever "demanded," the passage of the acts of August 23d, 1842, of March 3d, 1845, or that of July 21st, 1852. The appellant accepted the provisions of each of these statutes because it was the command of the Government expressed in the statutes, and in regard to the acceptance or rejection of those provisions they had no option. This court will not fail to see and to understand

that these acts were to be the instruments by which the poor and helpless remnant of Choctaws who still remained in Mississippi were TO BE FORCED TO REMOVE, BY COMPELLING THEM TO RECEIVE SCRIP IN LIEU OF THEIR RESERVATIONS, AND THEN DEPRIVE THEM OF THE SCRIP UNTIL THEY SHOULD ARRIVE IN THE CHOCTAW COUNTRY WEST OF THE MISSISSIPPI RIVER.

It is not pretended that there is anywhere in this record the slightest evidence that the appellant, or the individual Choctaws for whom it acted, ever "demanded" the passage of the act of 1852 or the money which *the United States required* to be paid under its provisions.

2d. Again, the court, in that case, used the following language:

Enough appears in the record to convince the court that the respondent was in straightened circumstances, that his business affairs had become complicated, that he was greatly embarrassed by litigations, and that he was in pressing want of pecuniary means; *but the court is wholly unable to see, that the complainant is responsible for those circumstances, or that he did any unlawful act,* to deprive the respondent of his property, OR TO CREATE THOSE NECESSITIES OR EMBARRASSMENTS, *or to compel him to do what he acknowledges he did do.* * * * Such an act as that of signing those instruments, under the circumstances disclosed in the record, must be regarded as a voluntary act, *as it was unattended by any act of violence, or threat of any kind, calculated* IN ANY DEGREE, TO INTIMIDATE *the party or to force the result, or to compel* THAT CONSENT WHICH IS THE ESSENCE OF EVERY VALID CONTRACT.

14 Wall, 333.

The Court of Claims, when it cited the above decision, for the purpose of enforcing the proposition that the "*necessities*" of the appellant could not relieve it from the legal effect of executing the release, had found, as facts established by the evidence, as follows:

1st. That in 1831 "the agent of the Government, in

carrying out the treaty with the Choctaws, *discouraged applications for reservations* under the *fourteenth* article.

Finding VII, Record, p. 63.

2d. That said agent declared that there "were too many of them desiring reservations," and "he directed the interpreter to tell them they must move."

Finding VII, Record, p. 62.

3d. That the same agent advised the removing agents to threaten the Indians desiring to remain "*with punishment* if they did not emigrate."

Finding VII, Record, p. 63.

4th. That said agent was unfit for the duties of the situation; that his conduct *was marked by acts* calculated to deter the Indians from making applications for reservations.

Finding IX, Record, p. 66.

5th. That said agent was abusive and insulting to the Indians, INTENDING THEREBY TO PREVENT THEM FROM MAKING APPLICATION FOR RESERVATIONS, AND NECESSITATE their going west of the Mississippi.

Finding IX, Record, p. 66.

6th. That "after August 24th, 1831, the agents of the United States—Armstrong and Lane—insisted that those Choctaws whose names had not been registered under the *fourteenth* article, previous to that date, should go west, AND IF THEY DID NOT GO, SOLDIERS WOULD BE SENT TO DRIVE THEM OUT, AND THAT THEY WOULD TAKE THEIR CHILDREN FROM THEM, AND MANY OTHER THREATS WERE MADE BY THEM.

Finding IX, Record, p. 67.

7th. That on July 31st, 1838, about 5,000 Choctaws remained in the State of Mississippi, notwithstanding the efforts of the removing agent, of the United States to re-

move them. They remained in Mississippi asserting their intention to claim the benefits of the *fourteenth* article.

Finding IX, Record, p. 67.

8th. That the condition of those who remained at the above date was as follows: "They have been most wantonly abused and ill-treated by the whites, and they could not live in peace in the same neighborhood. The large stocks of hogs and cattle introduced by the white settlers destroyed their crops. Their houses and cabins were torn down, burned, or destroyed by them. They well knew from bitter experience that they were at the mercy of their white neighbors. The instances are not rare in which FAMILIES HAVE BEEN WANTONLY DRIVEN FROM THEIR HOMES, AND FOR SEVERAL YEARS HAVE BEEN WANDERERS, LIVING ABOUT IN ALL SEASONS IN OPEN CAMPS, SEEKING A PRECARIOUS SUBSISTENCE, WHICH SCARCELY SUFFICED TO KEEP THEM ALIVE."

Finding VIII, Record, p. 66.

9th. That "many heads of Choctaw families, who either signified their purpose to remain, OR WERE PREVENTED FROM DOING SO BY THE ACTS OF THE AGENTS OF THE UNITED STATES, were driven from their reservations by white settlers, and before any classification was made under any law passed by Congress the lands of such reservees had been sold, TO THE NUMBER OF ELEVEN HUNDRED AND FIFTY, AND SUCH HEADS OF FAMILIES PREVENTED FROM SECURING THEIR CLAIMS UNDER THE FOURTEENTH ARTICLE."

Finding XII, Record, p. 71.

10th. The claimants under the fourteenth article, the said eleven hundred and fifty-five Choctaw heads of families and their children, WERE REDUCED TO A HELPLESS CONDITION OF WANT, which rendered it PRACTICALLY IMPOSSIBLE for them to contend with the United States IN THEIR REQUIRE-

MENTS that they (the said Choctaw heads of families) SHOULD ACCEPT AND RECEIVE THE SCRIP provided to be issued to them IN LIEU OF THEIR RESERVATIONS by the act of 1842; and the said scrip, AND THE MONEY PAID TO REDEEM THE SAME, WERE TAKEN AND ACCEPTED, BECAUSE THEY WERE POWERLESS, to enforce any demands against, or impose conditions upon, the United States.

Finding XVI, Record, p. 72.

It seems to us, too clear for argument, that here are a series of facts, which show such violence, intimidation, wrong, and oppression, which widely distinguish this case from that cited by the Court of Claims. If these facts, or any similar facts, had existed in that case, it is not possible that this court would have found a RELEASE EXECUTED under the accumulated pressure and force which they exerted—the result of that voluntary assent "which is the essence of every valid contract." In that case the court failed to find that the complainant had done any acts which produced the necessitous condition of the appellant, while in this case the court finds that the "helpless condition of want" to which the appellant had been reduced when it was required to accept the provisions of these statutes, was produced by the United States, either by the acts of its agents, or by its neglect and refusal to protect these fourteenth-article claimants against the depredations of white settlers.

THE RELEASE NOT VOLUNTARY, AND, THEREFORE, NOT AVAILABLE TO THE UNITED STATES AS A DEFENSE AGAINST THE FURTHER CLAIMS OF THE RESERVEES SPECIFIED IN SAID RELEASE.

There is, however, a more conclusive answer to the contention that the Court of Claims had not, under the act of March 3d, 1881, any jurisdiction of any claims or causes of action growing out of treaty stipulations with the Choctaw Nation which had been examined, adjusted, and settled in

the manner provided in the acts of March 3d, 1837, February 22d, 1838, August 23d, 1842, March 3d, 1845, and July 21st, 1852.

It is indispensable to the validity in law, of a COMPROMISE, by which a party surrenders or yields up some part of his rights, that the party whose rights are, by the COMPROMISE, surrendered, or conceded, away, MUST ACT FREELY; and if a compromise has been secured BY EXCITING THE FEARS OF THE PARTY against whom it is sought to be enforced, a court of equity will relieve the party from such compromise. There must, in every such case, be absolute and entire freedom of action and of choice. There must, in such cases, be no DURESS. The party against whom the compromise, or ACCORD AND SATISFACTION, is sought to be enforced MUST AGREE TO THE PROPOSED COMPROMISE OR TO THE PROPOSED TERMS OF SETTLEMENT FREELY; AND HE MUST HAVE THE RIGHT TO ACCEPT OR REJECT THE TERMS OF THE PROPOSED SETTLEMENT. The terms of the proposed compromise or settlement must be carried out AS PROPOSED BY THE PARTY OFFERING THE COMPROMISE, OR PROPOSING THE TERMS OF SETTLEMENT.

These propositions find support in the following authorities:

Wiley *v.* Warden, 1 Williams, (Vt.,) 655.
Clark *v.* Dinsmore, 5 N. H., 136.
Fentress *v.* Markle, 2 Green, (Iowa,) 558.
Hardman *v.* Belhouse, 9 M. & M., 600.
Brock *v.* Blanchard, 2 Foster, (N. H.,) 303.
Foshay *v.* Ferguson, 5 Hill, 154, 158.
Briggs *v.* Withey, 24 Mich., 136.
Blackburn *v.* Ormsby, 41 Penn. State R., 97.
Hearne *v.* Kiehe, 38 Ibid., 147.
State Bank *v.* Littlejohn, 1 Dev. & Batt., 565.
Higgins *v.* Halligan, 46 Ill., 173, 176.

This court has frequently had occasion to consider what action on the part of a citizen who had an unsettled claim

or demand against the Government would result in a compromise, an accord and satisfaction or a valid settlement of such claim, so that the citizen could not again be heard to contest his case in the courts. In this class of cases the court has held—

1st. That the right or claim must have been disputed or denied by the United States.

2d. That the adjustment or settlement of the disputed claim by the citizen was voluntary.

3d. That the remedy and settlement tendered by the United States was accepted by the citizen when he might have rejected its terms and brought suit against the United States in the Court of Claims.

In the case of the United States *v.* Adams, 7 Wall., 463, 479, this court said:

The bar to any further legal demand against the Government does not rest upon this acquittance, but upon the VOLUNTARY SUBMISSION of the claims to the board, the hearing and final decision thereon, the receipt of the vouchers containing the sum or amount found due to the claimant, and the acceptance of the payment of that amount under the act of Congress providing therefor.

In the case of Sweeney *v.* United States, 17 Wall., 75–78, this court used the following language:

Parties may adjust their own DISPUTES, and when they do so VOLUNTARILY AND UNDERSTANDINGLY, no appeal lies to the courts to review their MUTUAL decision.

In United States *v.* Justice, 14 Wall., 535–548, this court said:

This VOLUNTARY SUBMISSION and reception of the money is an acceptance on the part of the claimant of the mode tendered him by the Government for the SETTLEMENT of his DISPUTED CLAIM, and precludes him from any further litigation.

In another class of cases this court considers the existence, as an element in the case, of the power of the Government to enforce and compel the required act by the use of such means as the STATUTE authorizes; that where a citizen submits to the requirements of the agents of the Government, in order to prevent his business from being broken up and destroyed, the act done, or the release executed, under the pressure and force of such circumstances, is not voluntary. It is declared that the party whose rights are to be affected by the act done, or release executed must have an OPTION to refuse or assent to the proposed act. If the right of option did not exist, then the act done or assented to was not voluntary. It is also declared in these cases that, in order to render the act done or the offer accepted voluntary, the parties "SHOULD STAND UPON AN EQUAL FOOTING."

Swift Company *v.* United States, 111 U. S. R., 22.
Maxwell *v.* Griswold, 10 How., 242, 245.
Union Pacific Railroad Co. *v.* United States, 104 U. S. R., 666, 667.
Chicago and Northwestern Railway Co. *v.* United States, 104 Ibid., 680, 686.
Tutt *v.* Ide, 3 Blatchford, 249.
Wheeler *v.* Smith, 9 How., 55, 81, 83.
Beckwith *v.* Frisbie, 32 Vt., 566.
Loose *v.* Phipps, 7 Mann. & G., 586.
Parker *v.* Ide, 7 Ibid., 293.

Again, this court deals with another class of cases, where the principle is asserted that he who takes advantage of the necessities, poverty, distress, or helplessness of the party against whom an unjust or unconscionable deed, contract, release, or conveyance is sought to be enforced, and it is declared as the settled law of this court that such deeds, contracts, or conveyances, made with persons whose

condition was such as to render them incapable of freedom of action or choice, could not be enforced. That "necessitous men are not truly free men," when, "to answer a present emergency, they submit to any terms the crafty may impose upon them."

Russell *v.* Southard, 12 How., 131.
Villa *v.* Roderigues, 12 Ibid., 339, 340.
Pugh *v.* Davis, 96 U. S. R., 337.
Allore *v.* Jewell, 94 Ibid., 506, 512.
Graffam *v.* Burgess, 117 Ibid., 180, 185.

Mark the importance which this court, in each of these cases, attaches to the fact or act of VOLUNTARY SUBMISSION. The existence of *option* to refuse or accept the performance of the required act, and the situation and condition of the parties in respect to their condition, or being "on an equal footing." It is the exercise of volition, or option, which results from ABSOLUTE FREEDOM OF ACTION, which concludes the citizen in the settlement which each of the above cases discusses.

There is nothing in this record which shows that VOLUNTARY SUBMISSION of claims on the part of the fourteenth-article claimants, which this court considered and held conclusive upon the litigants in the cases of Adams, Justice, Sweeney, and "Swift Company," above cited.

The condition of these FOURTEENTH-ARTICLE reservees was such, during the period of these transactions, as TO PRECLUDE THE POSSIBILITY OF VOLUNTARY ACTION.

The Court of Claims has settled this fact beyond all dispute in those findings of fact to which we have already directed the attention of the court.

The record which is here presented for consideration, in regard to those whom the United States was bound to protect in the enjoyment of rights guaranteed by treaty stipulations, shows such conduct on the part of the agents of the United States as must naturally have excited in the

minds of these dependent wards of the Government a sense of such helplessness and oppression as deprived them of ALL power to act voluntarily and without constraint.

The facts which are so strongly stated by the Court of Claims in the above findings of fact establish the exceptional character of the cases of these eleven hundred and fifty-five Choctaw heads of families whose claims were rejected by that court, and relieve them of the force of those principles which this court has so often expressed with reference to those cases where there has been a VOLUNTARY SUBMISSION, as well as a VOLUNTARY ACCEPTANCE, of the fruits of such submission, where the right or claim had been adjusted and settled as the result of such VOLUNTARY SUBMISSION. The helpless condition of these reservees, as shown by these findings, rendered it impossible that they should exercise freedom of action in reference to the acceptance or rejection of the terms provided in the acts of 1837, 1838, or 1842.

Mr. Clairborne, one of the commissioners appointed under the act of 1842, gave forcible expression to the homeless and helpless condition of these people during the time when the harsh and unjust provisions of that act were being forced upon them. In an official communication, written by him as commissioner, he used the following language:

A people not enemies, not aliens, not swindlers, but proverbial for their honesty; born upon the sacred soil of this noble State; who worship the same Great Spirit that we worship, under the same skies and stars; a people over whom we have thrown our shield, and are bound to protect by every sentiment of honor, justice, and humanity. A people whom no threats, no persuasions, no rewards, no oppressions have been able to separate from the soil out of which they believe they were created, and on whose bosom they are willing to perish. For twelve years they have thus continued to live. Their rights, if any exist, have been denied to them. They have been subjected to the laws of the white man without enjoying his privileges;

annoyed with suits for violating statutes of which they never heard; taxed, but not voting; working on roads they never use; growing poorer every day by contact with a shrewder race; looked down upon as too inferior for intermarriage or social intercourse; circumscribed by the action of Government to a limited and barren section of a territory whose fertile valleys they once possessed; gleaning a precarious subsistence from the forest and from desultory labor; too often enduring the pangs of hunger in this land of abundance; with no fixed habitations, and scarcely a conception of the paradise of HOME; in sight of the schoolhouse and within the sound of the church-going bell, yet strangers alike to instruction and to the holy promises of our Heavenly Father. Shall these unfortunate people, after twelve years of broken faith and of hope deferred, be still further disappointed by the refusal of this board to decide their claims? POWERLESS, POOR, ILLITERATE, ever ready to defend US in war, BUT INCAPABLE OF DEFENDING THEMSELVES IN PEACE; ORPHANS IN THE EYE OF THE LAW; MERE INFANTS IN BUSINESS,—is it not time to act, definitely and without delay, upon their rights?

And yet the Court of Claims gravely decides that an adjustment of the claims of this people, thus situated, commenced and carried on by the United States for its exclusive benefit, was a VOLUNTARY SUBMISSION of their rights to the terms demanded and enforced by the United States.

Again, the Court of Claims finds, as a fact established by the evidence, that the United States, having sold and disposed of the reservations to which the said eleven hundred and fifty-five Choctaw heads of families and their children were entitled at the date of the treaty of 1830, did, between June, 1843, and November, 1851, issue and deliver to the said eleven hundred and fifty-five Choctaw heads of families and to their children the certificates or scrip provided for in the said act, for one million four hundred and four thousand six hundred and forty acres of land, *which certificates or scrip the said Choctaw heads of families and their children* WERE REQUIRED BY THE UNITED STATES TO RECEIVE

AND ACCEPT IN LIEU OF THE RESERVATIONS OF LAND TO WHICH, UNDER THE SAID FOURTEENTH ARTICLE OF THE TREATY, THE SAID CHOCTAW HEADS OF FAMILIES AND THEIR CHILDREN CLAIMED.

Finding XIV, Record, p. 71.

It is assumed that the bar to the further consideration of the claims of these reservees for that "further and full satisfaction" for which the treaty of 1855 made provision, results from three specific acts on the part of these reservees:

1st. The VOLUNTARY SUBMISSION of their claims to the board of commissioners provided by the acts of 1837 and 1842.

2d. The VOLUNTARY ACCEPTANCE by the reservees of the certificates or scrip issued in lieu of their reservations, as provided in the THIRD section of the act of August 23d, 1842.

3d. The VOLUNTARY ACCEPTANCE of the money appropriated for the payment and redemption of that one-half of said scrip which had been funded, as provided in the act of July 21st, 1852.

These THREE acts on the part of these reservees, not ONE of them is assumed by the Court of Claims to create a bar to a further consideration of said claims, and that, by reason thereof, that court could not allow them that "FURTHER AND FULL COMPENSATION" for which the treaty of 1855 made provision. It is the concurrence of each of these acts which creates the bar and produces the estoppel; and each of them must have been VOLUNTARY ACTS on the part of the reservee. If any or either of these independent and distinct acts were INVOLUNTARY, or were not the result of freedom of action, then it necessarily results that the estoppel, from which the bar to a further prosecution of the claims results, is destroyed and becomes inoperative.

The SCRIP which was to be issued to said reservees in

lieu of the reservations which it was "impossible for the United States to give them" was, by the statute under which it was issued, to be delivered, one-half in the State of Mississippi, where the reservee resided, and one-half after the arrival of the reservee in the Choctaw territory west of the Mississippi River. NO PART OF THE SCRIP WAS DELIVERED AS REQUIRED BY THE STATUTE. That one-half which was deliverable in the Choctaw territory west of the Mississippi River was not delivered at all, but was funded under the provisions of the act of March 3d, 1845. That one-half of said scrip, which the statute required to be delivered in the State of Mississippi, was not so delivered, but it was, after the passage of the funding act of 1845, withheld from the reservee by the United States until the reservee had started for, or had actually arrived in, the Choctaw territory west of the Mississippi River.

This fact is found by the Court of Claims in the following language:

> The United States REFUSED to deliver to the said Choctaw heads of families and their children that one-half of the scrip which might have been delivered to them under the provisions of the said act of Congress east of the Mississippi River, until the said Choctaw heads of families and their children had either started for, or actually arrived in, the Choctaw territory west of the Mississippi River.
>
> Finding XIV, Record, p. 72.

It is indispensable to the validity in law, of an accord and satisfaction, that the terms of THE NEW AGREEMENT, from which the accord and satisfaction is alleged to result, should be carried out and fulfilled in strict conformity with the requirements or undertakings of the new agreement. The failure, neglect, and refusal of the United States to issue and deliver this scrip as provided in the statute—which, so far as these fourteenth-article claimants were concerned, was the ONLY AGREEMENT made by the United States—was

of itself sufficient to avoid the plea of accord and satisfaction set up in the special plea of the defendant.

It is submitted, therefore, in conclusion, upon this question, as follows:

1st. That the submission of the claims of the reservees under the FOURTEENTH article of the treaty of 1830, to the commissioners appointed under the acts of 1837 and 1842, was not the result of that voluntary action on the part of said reservees which this court has declared makes an estoppel.

2d. That the acceptance of the scrip issued to said reservees in lieu of the reservations to which they were conceded to be entitled was not VOLUNTARY, and the said reservees had no option in regard to the acceptance or non-acceptance thereof.

3d. That the receipt of the money paid to redeem that part of said scrip which was funded under the provisions of the act of March 3d, 1845, and the execution of the release, required, as a CONDITION PRECEDENT, to the payment of the money necessary to redeem and satisfy said scrip, were not the voluntary acts of the said reservees or of the Choctaw National Authority, but the acceptance of the said money and the execution of said release were acts done by the said reservees, because they were in that helpless condition which rendered it impossible for them to contend with the United States in its requirement that the said reservees should accept said scrip, as well as the money paid to redeem the same, and should also execute the release required by the act of 1852.

4th. That even if the act of August 23d, 1842, was an act of compromise, or of accord and satisfaction, still the appellant was not concluded by an acceptance of its provisions, because the terms offered or proposed by the United

States, AS CONTAINED IN THAT STATUTE, were not carried into effect or complied with by the United States.

It necessarily results, therefore, from all these considerations, that the alleged discharge and satisfaction of the claims of the said ELEVEN HUNDRED AND FIFTY-FIVE CHOCTAW HEADS OF FAMILIES and their children in the defendant's special plea mentioned, were not in law effective, and did not release and discharge the defendant from its obligation to make compensation to the said specified number of Choctaw heads of families and their children for the loss and damage which they sustained by reason of the neglect and failure of the United States to fulfill the stipulations of the FOURTEENTH article of the treaty of 1830; and it is equally true, from the same considerations, that the Senate of the United States, acting under the authority conferred by article XI of the treaty of 1855, and the Court of Claims, acting under the authority of the act conferring the present jurisdiction, had the right, in the exercise of the power conferred, to examine, consider, and allow such compensation for said losses and damages as was contemplated by the appellant and the United States when it provided, in said article of said treaty, that "the rights and claims" of the appellant "against the United States" should receive "a just, fair, and liberal consideration."

F. THE TREATY OF 1855, BY FORCE OF ITS OWN TERMS AND PROVISIONS, SET ASIDE AND DESTROYED, AS A LEGAL DEFENSE IN THIS PROCEEDING, THE RELEASE EXECUTED BY THE AUTHORITY OF THE CHOCTAW NATION ON THE 6TH DAY OF NOVEMBER, 1852; AND THE SENATE OF THE UNITED STATES, BY FORCE OF THE PROVISIONS OF ARTICLE XI OF SAID TREATY, AND THE COURT OF CLAIMS, IN ITS EXERCISE OF THE POWER TO REVIEW "THE ENTIRE QUESTION OF DIFFERENCES DE NOVO," WERE AUTHORIZED AND REQUIRED TO EXAMINE, CONSIDER, AND ADJUDGE, UPON PRINCIPLES "JUST, FAIR, AND LIBERAL," THE RIGHTS AND CLAIMS OF THOSE CHOCTAW HEADS OF FAMILIES AND THEIR CHILDREN IN WHOSE BEHALF THE SAID RELEASE WAS EXECUTED, AS REQUIRED BY THE PROVISIONS OF THE ACT APPROVED JULY 21ST, 1852, NOTWITHSTANDING SUCH RELEASE.

It was the *intention* of the parties to the treaty of 1855 *to re-open* the whole subject of the claims which the appellant, as a Nation, or the individual members of the Nation, at that time, asserted against the United States. This proposition is established by the following considerations:

1st. By the facts and circumstances which preceded the conclusion of the treaty.

2d. By the express language and provisions of the treaty itself.

The Court of Claims finds, as facts established by the evidence, that the appellant, previous to the date of that treaty, had presented and urged its rights and claims

against the United States, as then existing, to be in substance as follows:

1st. That in a communication of the 5th of April, 1854, the delegation presented to the Commissioner of Indian Affairs a general statement or survey of the condition of the relations then existing between the Choctaw Nation and the United States, in which they made serious complaint against the Government, especially for causes of dissatisfaction arising under the treaty of "Dancing Rabbit Creek." It was claimed in that and other communications, prior to the treaty of 1855, that scarcely one of the stipulations of said treaty had been carried out by the Government to do justice according to the intent of the treaty.

2d. That under the fourteenth article every head of a family could have remained east, but that a great many of them yielded to the policy of the Government, and consented to go west; that sufficient time was not given them, but that they were hurried off, to the detriment of their life and property. They contended that no compensation had been made by the Government for the sacrifices which the people had been subjected to in consequence of being compelled to leave their personal effects.

3d. That in many instances no cattle had been furnished by the Government for the cattle left by the Indians who emigrated, although they were assured that such compensation would be made.

4th. They claimed that their reservations under the fourteenth article were sold by the Government; that the Indians were dispossessed of them by lawless white men, and that threats and intimidation had been used to force the emigration of those who desired to remain and who were entitled to reservations under said article.

5th. They alleged that the laws passed for the examination of their claims under said treaty and said article prescribed a course of adjudication of so rigid and technical a character as necessarily to exclude many just claims; that many were compelled to remove because of the failure of the Government to give them their rights under said article, and that the law unjustly cut off such persons from all benefits.

6th. That the scrip issued under the law was paid in such a manner as to make it of but little value to the Indian, and that the result was that those who received anything received but a mere pittance.

7th. They contended that many claims existed unadjusted and unpaid under the nineteenth article; that it was hopeless to press the various claims as individual claims against the Government, and that they could only be settled by the Choctaw Nation, and that so long as they were unsettled there would be controversy and excitement; that the Choctaw Nation could better adjust such claims with the individuals than the United States. They insisted on important national claims which should be adjusted and settled.

8th. They claimed that under the treaty of Dancing Rabbit Creek the Nation was entitled to the funds arising from the sale of lands ceded, after deducting expenses of sale and the "debt" mentioned in such treaty.

9th. That the Government was a trustee for the Choctaw Nation in the sale of the lands ceded by the treaty of 1830; that after the payment of the expense incident to the execution of the trust, the Indians were entitled to the remainder; and that the payment to the Nation of such

remainder might operate in law to a satisfaction of individual claims under a new treaty.

Finding XXIV, Record, pp. 75, 76, 77.

10th. That their own lands, to which they were entitled under the treaty of 1830, *but* of which they were dispossessed, they could have sold in many cases for from five to ten dollars an acre.

Finding XXVIII, Record, p. 81.

11th. That the negotiations, in which the said claims were presented for the consideration of the officers of the United States engaged in conducting said negotiations on its behalf, continued until the 25th of September, 1854, *when the Secretary of the Interior refused to further continue them*.

Finding XXVIII, Record, p. 84.

12th. That on the 9th of April, 1855, *the negotiations were resumed at the instance of the United States*, and were thereafter conducted with reference to the accomplishment of the following objects:

FIRST. That the United States should provide, in a *new* treaty, for an examination and settlement of all the claims of the Choctaws, whether national or individual, under the treaty of 1830, as specified in their letter to the Commissioner of Indian Affairs dated April 5, 1854.

SECOND. That the Choctaws should adjust their disputes with the Chickasaws; should lease to the United States "all that portion of their common territory between the 98th and the 100th degree of west longitude, for the permanent settlement of the Wichita and such other bands of Indians as the Government might desire to locate therein;" and should absolutely and forever quit-claim and relinquish to the United States all their right, title, and interest in and to any and all lands west of the 100th degree of west longitude.

Finding XXVIII, Record, pp. 84, 85.

Those matters and subjects of contention which were *assertion* on the part of the appellant in 1854 and 1855 have become *established facts*, as the result of that judicial investigation which has been accomplished under the authority of the jurisdictional act. The Court of Claims has found as facts established, and as legal conclusions resulting from those facts, as follows:

1st. Under the fourteenth article of the treaty of 1830 there were 1,489 heads of families *entitled* to reservations in *fee-simple.*

Findings XII, XIII, XIV, Record, p. 71.

2d. These Indians, by the terms of the treaty, had the right to remain. They were under no obligation to remove.

Record, p. 109.

3d. Of this number, 1,346 did not receive their reservations, and they were entitled to reservations aggregating 1,630,400 acres.

Findings XIII, XIV, Record, p. 71.

4th. They claimed these reservations according to the terms of the treaty, and did all they could to procure them, but were defeated by the wrongful acts of the agents of the Government.

Findings XII, XIII, Record, p. 71.

5th. Although they were entitled to these lands *in fee-simple*, the Government sold the lands to which they were thus entitled, and put the money in the Treasury.

Finding XIV, Record, p. 71.

6th. The Government having, by its own wrongful acts, deprived these fourteenth-article claimants of these lands, and without any fault on the part of said claimants, and having put it out of its power to comply with the treaty, thereupon Congress provided, by the act of August 23,

1842, for issuing and delivering to them scrip in lieu of their reservations, when they arrived west of the Mississippi, and not before, which scrip, thus issued and delivered, they were required to accept "in lieu of their reservations."

Finding XIV, Record, p. 71.

7th. The Secretary of War ordered that none of it should be delivered until they were on the way, and afterwards changed that order by another directing that none should be delivered until their arrival in their new homes in the West.

Finding XLIII, Record, p. 94.

8th. They were *coerced* to accept this scrip by that helpless condition of want to which they had been reduced by the acts of the agents of the United States.

Finding XVI, Record, p. 72.

9th. By the act of July 21st, 1852, $21,800 was appropriated to pay interest on this scrip for the half year ending June 30th, 1852, and providing that *no interest should be paid after that date;* and appropriated $872,000 to pay the scrip funded under the act of 1845, but provided that this money should not be paid, until they executed a release of all claims under the fourteenth article, and the release was executed.

Finding XV, Record, p. 72.

10th. Of these acts of flagrant injustice they complained before the conclusion of the treaty of 1855.

Finding XXIV, Record, pp. 76, 77.

11th. The treaty of 1855 provided that all these claims should be submitted to the Senate, to be there considered upon principles "*just, fair, and liberal.*" The Court of Claims found as a fact that they took the money for which the

release was executed because they were powerless to do otherwise, (finding XVI, p. 72,) and the Court of Claims declared, and the United States contended, in the face of these facts, that that release is conclusive upon those fourteenth-article claimants whose scrip was redeemed; and this court is now called upon to decide whether, on these undisputed facts, it is binding upon them, taken in connection with that treaty.

The lawless violence and outrages which were perpetrated upon the fourteenth-article claimants, as they have been shown to exist, need not be further considered here; but the extent of the losses resulting from those wrongs are appropriate subjects of consideration in determining what the treaty of 1855 was intended to accomplish, so far as providing for "further and full satisfaction" to those fourteenth-article claimants who had received "*the merest pittance*" as the result of that "*rigid and technical adjudication*" of their claims which was provided by the acts of 1837, 1838, and 1842.

The appellant asserted that the extent of obligations of the United States under the *fourteenth* article was $2,350,000. This estimate put the lands then claimed as having been guaranteed by that article at $1.25 per acre.

Finding XXVI, Record, p. 77.

The Court of Claims has found that thirteen hundred and forty-six heads of Choctaw families and their children were entitled to *one million six hundred and thirty thousand four hundred acres of reservations*, and that said reservations were worth in 1830 and 1831, when the title to them was inchoate—mere floats—*three million sixteen thousand two hundred and forty dollars* ($3,016,240).

Findings XIII, XIV, XXIX, Record, pp. 71, 85.

The said fourteenth-article claimants had received from the United States when the negotiations which preceded

the treaty of 1855 commenced the following payments in money and property on account, in part settlement of, the claims of said reservees:

1st. The amount paid under the act of July 21st, 1852, $872,000.

Finding XV, Record, p. 72.

2d. Amount of scrip issued in lieu of reservations, being 701,680 acres, at 21½ cents per acre, $150,861.20.

Finding XXX, Record, pp. 85, 86.

The amount of these two payments of money and scrip, therefore, was one million twenty thousand eight hundred and sixty-one dollars and twenty cents ($1,022,861.20), showing a loss on this account, even at the valuation put upon these reservations by the Court of Claims, amounting to one million nine hundred and ninety-five thousand three hundred and seventy-eight dollars and eighty cents ($1,993,378.80).

But the value of these reservations should have been fixed at the date when the reservees became entitled to "grants in *fee-simple*," to wit, on or about the 24th of February, 1836, and not in 1830 and 1831, when the reservee had no absolute title which he could convey.

The appellant in its letter of April 5th, 1854, states that "*their own lands*, of which they were dispossessed, they could have sold in many cases for from five to ten dollars an acre."

Finding XXVIII, Record, p. 81.

The Senate Committee on Indian Affairs, discussing the value of these reservations, used the following language:

Their lands, partly improved, and naturally selected by them for their superior advantages of soil and situation, were worth, probably, much more than $1.25 per acre, per-

haps, *on an average, not less than five dollars, and much of it still more.*

Senate Report Committee No. 374, 35th Cong., 2d Sess.

The sales of the orphan lands reserved by article XIX, perhaps, furnish the best evidence of the value of these reservations. They were required to be *of an average quality and value* with the other lands ceded by the treaty of 1830. They were selected so as to be "*of such average quality and value.*"

There were one hundred and thirty-four quarter sections of such reservations, and there was embraced in said reservations twenty-one thousand four hundred and forty acres, which were selected promiscuously in the three districts of land embraced in the Choctaw cession of 1830.

Finding XXII, Record, p. 74.

Those reservations being sold by and under the direction of the United States, brought the sum *of one hundred and twenty thousand eight hundred and twenty-seven dollars and seventy-six cents* ($120,827.76), or a net average of five dollars and sixty-three cents ($5.63) per acre.

Finding XXXIX, Record, p. 92.

Let us look for a moment at the magnitude of these fourteenth-article claims as they existed at the date of these negotiations.

There were 1,346 Choctaw heads of families who were entitled to reservations under the *fourteenth* article. That fact is beyond dispute, because the Court of Claims has so found it. These reservees were entitled on the 24th day of February, 1836, to grants in *fee-simple* for one million six hundred and thirty thousand four hundred acres (1,630,400) of reservations.

Findings XIII and XIV, Record, p. 71.

If said reservations were worth on that date *five dollars* an acre, as the appellant contended and the Senate Committee admits, then the amount due to said *fourteenth*-article claimants was $8,152,000, from which should be deducted the amount paid in money—$872,000—and the amount realized from the scrip at 21½ cents an acre ($150,-861.20), making an aggregate of $1,022,861.20; and this amount being deducted, leaves a balance due for losses on account of these claims amounting to the sum of $7,128,-138.80.

If the value of said fourteenth-article reservations is fixed at the value of the orphan reservations, as shown by the net proceeds of their sale, then the amount of losses to the fourteenth-article reservees was largely in excess of the above sum, as follows:

Value of 1,630,400 acres of reservations, at five dollars and sixty-three cents ($5.63) per acre, is $9,179,152; from which deduct the above amount for payment in money and scrip, leaves a balance of $8,156,290.

In view of the magnitude of these losses, it can be easily understood why it was that the Choctaw commissioners, in their letter of April 5th, 1854, requested the Commissioner of Indian Affairs to—

> Consider the history of the execution of the *fourteenth article* of the treaty *and the wrong and injustice inflicted upon a large portion of that class who elected to take advantage of its provisions.*
>
> Finding XXVIII, Record, p. 80.

Their lands had been refused them when they were demanding them under the treaty. They were sold by the Government when it had no right to sell them. They were required to go to the west when they desired to remain, and had a right to remain. They were compelled to go west as a condition precedent to receiving this scrip, and they were compelled for the still stronger reason that the

Government had sold from them their homes, and left no alternative but to go; and after they had gone, the Government dictated to them its own terms of settlement, by saying the interest on this scrip is to be stopped; no more will be paid; and $872,000 will be paid you if you will execute a full release of all these claims, but nothing if you refuse.

These claims were the most extensive, the most important, as well as the most just, of any that were asserted, because they had about them such incidents of wrong and oppression as made them the most conspicuous in character and the most general and all-embracing of all the claims asserted. They affected the largest number of the Choctaw people, and involved amounts of more than ordinary magnitude. They were put in the fore-front of the preliminary statement of their claims as furnished by them in their letter of the 5th of April, 1854. They are the first item in the "*estimate*" furnished to the Commisioner of Indian Affairs by the agent of the United States for Choctaws as "a comparative estimate or approximate statement of the claims then asserted by the Choctaw commissioners."

Finding XXVI, Record, p. 77.

The ultimatum of the Choctaw commissioners was, that the United States should agree "IN A NEW TREATY for an examination and settlement OF ALL THE CLAIMS OF THE CHOCTAWS, WHETHER NATIONAL OR INDIVIDUAL, under the treaty of 1830, AS SPECIFIED IN THEIR LETTER TO THE COMMISSIONER OF INDIAN AFFAIRS, DATED APRIL 5, 1854."

Finding XXVIII, Record, p. 85.

This necessarily included provision for an examination of the claims of those who had "RECEIVED THE MEREST PITTANCE," as well as those whose reservations "were sold from them by the Government as public land," or who were "forcibly dispossessed of their lands," or were

"driven from their lands" by the "threats and intimidations" of "heartless and lawless white men." This language, and these terms, mean none other than those persons who had received "*a compensation wholly inadequate*," by means of those provisions which were contained in the acts of 1837, 1842, 1845, and 1852. It is thus made clear and express that the contracting parties, when they were discussing those subjects and matters which were to be examined, adjusted, and settled by means of a *new* treaty, INTENDED TO PROVIDE, in such *new* treaty, for a *re-examination*, by the tribunal to be created by such new treaty, of the claims of those fourteenth-article claimants who had received that "*merest pittance*," or that "*compensation wholly inadequate*," which had been theretofore provided under acts of Congress.

THE LANGUAGE USED IN THE TREATY WHICH RESULTED FROM THESE NEGOTIATIONS EXPRESSES THE INTENTION OF BOTH PARTIES, THAT THE SENATE, IN THE ADJUDICATION OF THE QUESTIONS SUBMITTED, SHOULD EXAMINE AND CONSIDER ALL THE CLAIMS OF THE CHOCTAWS, WITHOUT REGARD TO THE QUESTION OF ANY PREVIOUS ADJUSTMENT AND SETTLEMENT OF SUCH CLAIMS, OR THE EXECUTION OF SAID ALLEGED RELEASE.

It being clear that such was the *intention* of the parties during the negotiations which preceded the treaty of 1855, it is important to inquire if that *intention* has been expressed in apt and appropriate language in that treaty.

The Court of Claims, in its opinion, declares that it cannot find such an intention expressed in any of the provisions of the treaty of 1855. The language of the court upon that question is as follows:

The acceptance of the annuity under the act of July 21, 1852, and the execution of the instrument set forth in

the twenty-third finding, are the acts of the constituted authorities of the Choctaw Nation, *and we find no warrant in anything said in the treaty of* 1855 * * * to *justify us in disregarding the legal effect of that instrument.*

Record, p. 114.

The correctness of the above conclusion can only be determined by an examination of the provisions of the treaty itself. The only language *in the enacting provisions of that treaty* which provides for an examination of the claims of the appellant against the United States is contained in article XI, which is as follows:

The Government of the United States not being prepared to assent to the claim set up under the treaty of September 27, 1830, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, AND BEING DESIROUS THAT THEIR RIGHTS AND CLAIMS AGAINST THE UNITED STATES SHALL RECEIVE A JUST, FAIR, AND LIBERAL CONSIDERATION, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27th, 1830, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, IN ORDER THAT A FINAL SETTLEMENT WITH THEM MAY BE PROMPTLY EFFECTED; or

Second. Whether the Choctaws shall be allowed A GROSS SUM IN FURTHER AND FULL SATISFACTION OF ALL THEIR CLAIMS, NATIONAL AND INDIVIDUAL, AGAINST THE UNITED STATES; and if so, how much.

11 Stats. at Large, 613.

In giving *construction* to this language—if it is not so clear and unmistakable that it requires no aid from con-

struction—it is permitted to read these words in the light of the facts which preceded its conclusion. If, however, there is no ambiguity of language in its provisions, it is neither useful nor necessary to exercise or resort to the office of *construction.*

It is impossible to find in the terms of the above article that language which *excluded* from submission to, or consideration by, the Senate the claims of those individual Choctaws who had received scrip and money, as provided in the acts of August 23d, 1842, and July 21st, 1852. This is made exceedingly clear upon the following considerations:

FIRST. Submission "for adjudication to the Senate" was provided, because the United States desired that "THE RIGHTS AND CLAIMS" OF THE CHOCTAW PEOPLE AGAINST THE UNITED STATES should receive "A JUST, FAIR, AND LIBERAL CONSIDERATION." This necessarily embraced the "RIGHTS AND CLAIMS" of ALL of the Choctaw people, not a few or a part of them. It did not exclude from consideration by the Senate the claims of those Choctaws who had, previous to the date of that treaty, received from the United States "the merest pittance," or "a compensation wholly inadequate."

SECOND. Such submission to the Senate was provided, "IN ORDER THAT A FINAL SETTLEMENT WITH THEM (THE CHOCTAWS) MAY BE PROMPTLY EFFECTED."

Surely this language implies that the only settlement which should be considered FINAL was that which should result from the adjudication and decision of the Senate under that treaty. The settlement provided for in that treaty was to be FINAL, and this necessarily implies that *no other settlement*, by means of which some of the Choctaw people had received "the merest pittance," or "a compensation wholly inadequate," should be so considered. *All* the Choctaw people, by means of this new treaty, were

to have "THEIR RIGHTS AND CLAIMS" examined and adjusted upon terms "JUST, FAIR, AND LIBERAL," and these terms would not permit the exclusion from consideration by the Senate of the "RIGHTS AND CLAIMS" of any Choctaw citizen whose rights and claims had not been examined, adjusted, and settled according to the requirements of those principles.

THIRD. Such submission to the Senate was provided, in order that "FURTHER AND FULL SATISFACTION" "OF ALL THEIR CLAIMS" against the United States should be obtained and secured.

These words are inconsistent with the assumption that "the rights and claims" of those who had, by means of antecedent examinations under statutory proceedings, received "the merest pittance" or "a compensation wholly inadequate;" were to be excluded from the consideration of the Senate in that examination and adjudication of the "RIGHTS AND CLAIMS" of *all* the Choctaws which the Senate was required by the treaty to make upon terms "just, fair, and liberal."

To provide for a "FURTHER SATISFACTION" of claims implies that claims are to be examined which have been to some extent satisfied, and upon which something, either in money or property, has been paid. To provide for a "FULL SATISFACTION" of claims implies that such claims have been *previously*, *partially*, or incompletely satisfied. That "FURTHER AND FULL SATISFACTION" of "ALL THE CLAIMS" of the Choctaws against the United States, which it was admitted in this treaty ought to be made, was to be provided by means of the submission of all the "RIGHTS AND CLAIMS" of the Choctaws to the Senate. The determination of the question of the extent and the amount for which "FURTHER AND FULL SATISFACTION" should be provided necessarily required the Senate to examine into the character and *extent* of the "*satisfaction*" previously

made, and to determine how much or what sum was required to be paid in order to provide that "FURTHER AND FULL SATISFACTION" which the United States, by the treaty, agreed to make. It is obvious that this could not be done without a full, thorough, and complete *re-examination* of all antecedent settlements, adjustments, and payments; and for the purpose of having and permitting such *re-examination* of such "rights and claims," and determining the question of the right of the Choctaws to a "FURTHER AND FULL COMPENSATION," all settlements, releases, and acquittances are, by the provisions of the treaty, set aside, if they hinder or prevent such *re-examination.*

This proposition results from the recognition of that principle of law which asserts that where a power is conferred or a duty enjoined by a statute in general terms, and in respect to the execution of the power or the performance of the duty the statute fails to give direction, that there, and in all such cases, the general terms of the statute authorizes the execution of the power or the discharge of the duty by the use of such means as are most appropriate and reasonable for the execution of the power or the discharge of the duty which the statute has conferred and enjoined.

FOURTH. It is obvious that another and familiar rule of law would justify the proposition for which we here contend, even if the strong and peculiar language to which the attention of the court has been directed had been omitted. The *eleventh* article is a provision conferring upon the Senate authority and jurisdiction to decide the questions submitted by that article. The Senate is, therefore, by that article, constituted a competent tribunal of exclusive jurisdiction for the purpose of deciding those questions; and in order to enable this special tribunal to determine the questions submitted, it has the right to examine and consider "ALL RIGHTS AND CLAIMS" which would enable

it (the said tribunal) to answer the questions submitted. The powers and duties the Senate was to exercise and discharge were not unlike those often committed to boards or tribunals of arbitration. *In all such cases* where the terms of the submission are general and unlimited in regard to the subjects submitted to arbitration—as a submission of "all controversies," or "all claims and demands," or, as here submitted, their "rights and claims," or whether the Choctaws are entitled to "*or shall be allowed*" the net proceeds of the lands ceded by them to the United States by the treaty of 1830, or "*shall be allowed a gross sum* IN FURTHER AND FULL SATISFACTION OF ALL THEIR CLAIMS, NATIONAL AND INDIVIDUAL, against the United States"—there the courts construe the language and terms of the submission largely and liberally in the interest of complete justice, and of that public policy which favors the putting an end to controversy and contention.

Bryant *v.* Fisher, 85 N. C., 69.
Hobson *v.* McArthur, 16 Pet., 192, 193.
Karthaus *v.* Ferrer, 1 Pet., 228.
Penniman *v.* Rodman, 54 Mass., (13 Met.,) 384.
Burchell *v.* Marsh, 17 How., 351.

FIFTH. The language of the *preamble* to that treaty cannot limit, or restrain, or overthrow, the most essential and the most unmistakable words of the submission as contained in the *eleventh* article. The language of the *preamble*, which was assumed to limit and restrain the Senate in its exercise, under the submission, of the right and authority to consider all the claims of the Choctaws, as well as their "*rights and claims*," is as follows:

And, whereas the Choctaws contend that by a just and fair construction of the treaty of September 27th, 1830, they are of right entitled to the net proceeds of the lands ceded by them to the United States under said treaty, and have proposed that the question of their right to the same,

together with the whole subject-matter of THEIR UNSETTLED CLAIMS, *whether national or individual, against the United States, arising under the various provisions of the said treaty, shall be referred to the Senate of the United States for final adjudication and adjustment.*

11 Stats. at Large, 611.

It is never within the scope of the purpose of *a preamble* to restrain the general words of an enacting clause. This proposition is clear and conclusive upon the following authorities:

Sedgwick, on the Construction of Statutes, p. 43, uses, upon this subject, the following language:

But it is well settled that where the intention of the Legislature is clearly expressed in the purview, the preamble shall not restrain it, *although it be of much narrower import.*

In the case of *Kearnes* v. *The Cordwainers Company*, 5 Jurist, pp. 1216, 1219, a recent English case, it was contended that the broad and comprehensive terms of one of the sections of the statute, there under consideration, was limited and restrained by the language of the *preamble* to the statute; but the court, considering this proposition, used the following language:

The language of the section is in the most general terms. * * * But it is said we must look at the *preamble* of the act of Parliament, the circumstances under which it was passed, and the agreements which have taken place. Now, in the *preamble*, reference is made to the disputes which have occurred between the Crown and the corporation on the question of the right to the bed of the river, and it is stated that an agreement had been come to; and it is said that we must look at the provisions of the agreement and refer to the clauses of the act *seriatim*, enacted with a view to the provisions of this agreement; that is to say, that the language of the fifty-third section is to be confined and restrained by the preamble. But it appears to me that the general rule of construction must prevail here which I find

laid down by Dampier, J., in *Truman* v. *Lambert*, (4 Man. and S., 238,) to wit, that the enacting clause shall not be restrained by the preamble if the words are large enough to comprehend the case. So, in Walker *v.* Richardson, (2 M. & W., 889,) Lord Abinger says: "The general rule is that the preamble *may extend*, BUT CANNOT RESTRAIN, the effect of a particular clause."

In *Jackson* v. *Gilchrist*, 15 Johns., 88, 116, the court used the following language:

It is in general true that the preamble of a statute is a key to open the mind of the makers as to the mischiefs to be remedied by the statute. This rule must not, however, be carried so far as to restrain the general words of an enacting clause by the particular words of the preamble. Although the preamble cannot control the enacting part of a statute, which is expressed in clear and unambiguous terms, yet, if any doubt arises on the words of the enacting part, the preamble may be resorted to to explain it.

It is manifest, therefore, that the considerations here presented, based upon the plain and express words of the treaty, lead to two most important results:

First. That the submission to the Senate, as contained in the eleventh article, did authorize it to consider the intrinsic "*justice and equity*" of *all* the fourteenth-article claims, and this independently of the technical effect of the alleged release; and

Second. That the Court of Claims, in its exercise of the power "TO REVIEW *de novo*," was required and bound to examine and consider *all of the fourteenth-article claims* in the light of that rule, which required "THE RIGHTS AND CLAIMS" of the appellant to be considered upon principles "JUST, FAIR, AND LIBERAL;" and the said court was required to treat the said claims as within the submission, and it ought to have considered them as sufficient to justify the award of the Senate, notwithstanding the said alleged release.

SIXTH. But there is another view of this branch of the case to which the attention of the court is especially invited:

The Court of Claims held that the statute giving that court jurisdiction, by its terms set aside the award of the Senate, and devolved upon the court the power and duty to try all questions of difference arising out of treaty stipulations *de novo*. If this is a correct conclusion, then certainly one of those questions of difference was and is whether the United States had performed its treaty obligations in respect of these fourteenth-article claims, and this directly involved the *question* as to the *binding obligation of this release*. If the court was to try these questions of difference *de novo*, it must of necessity determine whether that release was one which the United States are entitled to have the benefit of, as a defense, in this proceeding. The facts and circumstances under which the release was procured and executed have been hereinbefore fully stated.

The Court of Claims held that, notwithstanding these facts, this release *was binding* on those Choctaw heads of families who were specified in it, and thus this court is required to determine whether, thus procured, it is binding in law upon said Choctaw heads of families, and whether, by reason of said release, these 1155 Choctaw families shall be limited to the compensation received by them, for which the release was given.

It is admitted that they were entitled to their reservations *in fee*. It is not denied that the lands were worth at least $1.85 per acre. It is not disputed that they tried to get the lands under the treaty. It is found by the court that the wrongful acts of the agents of the Government prevented them from securing their reservations; and it is also found by the court that they accepted the compensation offered them, because they were powerless to resist.

As contended in another part of this brief, and for the reasons, and on the authorities there cited, we insist that the release was procured by the use of such means as would

in law amount to *duress*, as between the appellant and the United States, because of the peculiar relation of guardian and ward which exists between the United States and its Indian tribes. And if we are right in this, then it follows from the findings of the Court of Claims (whatever may be the views of this court as to the award) that the Court of Claims erred in not allowing "*further and full compensation*" for the reservations of these 1155 Choctaw heads of families in whose behalf the said release was executed.

G. THE APPELLANT IS ENTITLED TO RECOVER THE VALUE OF THOSE FOURTEENTH-ARTICLE RESERVATIONS FOR WHICH THE COURT ALLOWED COMPENSATION TO ONE HUNDRED AND NINETY-ONE CHOCTAW HEADS OF FAMILIES AND THEIR CHILDREN, THE VALUE OF SUCH RESERVATIONS AT THE TIME WHEN THE SAID CHOCTAW HEADS OF FAMILIES AND THEIR CHILDREN BECAME ENTITLED TO RECEIVE GRANTS IN FEE-SIMPLE FOR SAID RESERVATIONS, TO WIT, ON THE 24TH DAY OF FEBRUARY, 1836.

The Court of Claims fixed the value of said reservations "in 1830 and 1831." This was just as much an error on the part of that court as not to have fixed such value at all. The court finds as a fact upon which it bases that part of its judgment which is represented by the claims of said "*one hundred and ninety-one Choctaw heads of families and their children*," as follows:

> The average value of the land ceded by the treaty of 1830, and to which the reservations provided by the treaty applies, was, in 1830 and 1831, the sum of $1.85 per acre.
>
> Finding XXIX, Record, p. 85.

The finding of the value of a reservation "in 1830 and 1831" was not the legal equivalent of finding the value of a reservation granted by the United States in *fee-simple*

on the 24th of February, 1836. That was what the United States agreed by the treaty to grant. The *reservation* became complete upon the performance of the simple requirements of signifying to the agent of the United States of the intention of the reservee to remain and become a citizen of the States "within six months from the ratification of the treaty." The right to a *grant in fee-simple* did not become complete except the reservees should "reside upon said lands, intending to become citizens of the States, for five years after the ratification of *this* treaty." The right to a reservation depended upon signifying to the agent an intention to remain and become a citizen within six months from *the* date of ratification, while the right to a grant in *fee-simple* depended upon five years' residence from the date of ratification, with the intention to become a citizen. If the reservee complied with these conditions, he became entitled to demand from the United States the grant in *fee-simple.* If the United States failed to make or deliver the grants, as it did in respect to these reservations, *the measure of damages* which the reservee is entitled to recover by reason of such failure is the value of the reservation when the grant in *fee-simple* was to be issued and delivered, and not the value thereof at the date of the treaty—September 27th, 1830—or at the date of the expiration of the time allowed for signifying an intention to remain and become a citizen, to wit, on the 24th of August, 1831.

This is the settled rule of this court:

In Shepherd *v.* Hampton, 3 Wheaton, 200, 204, Chief Justice Marshall said:

> The only question is, whether the price of the article at the time of the breach of the contract, or at any subsequent time before suit brought, constitutes the proper rule of damages in this case. The unanimous opinion of the court is, that the price of the article, *at the time it was to be delivered, is the measure of damages.*

In Hopkins *v.* Lee, 6 Wheaton, 109, 117, this court, again discussing this question in regard to the measure of damages recoverable upon the breach of a contract for the conveyance of real estate, used the following language:

In the assessment of damages, the counsel for the plaintiff in error, prayed the court to instruct the jury, that they should take the price of the land, as agreed upon by the parties in the articles of agreement upon which the suit was brought, for their government. But the court refused to give this instruction, and directed the jury *to take the price of the lands at the time they ought to have been conveyed, as the measure of damages.* To this instruction the plaintiff in error excepted. *The rule is settled in this court* that in an action by the vendee, for a breach of contract on the part of the vendor, for not delivering the article, the measure of damages is its price *at the time of the breach.* The price being settled by the contract, which is generally the case, makes no difference, nor ought it to make any; otherwise the vendor, if the articles *have* risen in value, would always have it in his power to discharge himself from his contract, and put the enhanced value in his own pocket. *Nor can it make any difference in principle, whether the contract be for the sale of real or personal property.* In both cases the vendee is entitled to have the thing agreed for, at the contract price, and to sell it himself at its increased value.

The following cases also assert the same proposition of law:

Drake *v.* Baker, 34 N. J., 358.
Plummer *v.* Rigdon, 78 Ills., 222.
Buckmaster v. Grundy, 1 Scam., 310.
McKee *v.* Brandon, 2 *Ibid.*, 339.
Gale *v.* Dean, 20 Ills., 320.
Lawrence *v.* Chase, 54 Me., 194.
Boardman *v.* Keeler, 21 Vt., 84.
Kirkpatrick *v.* Downing, 58 Mo., 32.
Bronham *v.* Nichols, 3 R. I., 187.
Wells *v.* Aberthany, 5 Conn., 222.
Connell *v.* McLean, 6 Harris & I., 297.

It follows from these authorities that the Court of Claims erred in allowing to said reservees the "*average value of the lands to which the reservations applied in* 1830 *and* 1831," instead of allowing the value of such reservations *granted in fee-simple* at the time such grant became deliverable under the provisions of the treaty.

H. THE NINETEENTH ARTICLE OF THE TREATY OF 1830 AND THE ELEVENTH ARTICLE OF THE TREATY OF 1855 AUTHORIZED THE COURT OF CLAIMS, AND AUTHORIZE THIS COURT, UPON A "REVIEW" OF THE QUESTION OF DIFFERENCES DE NOVO, TO ALLOW TO THE FOURTEEN HUNDRED AND THIRTEEN CHOCTAW HEADS OF FAMILIES WHO HAD FROM TWO TO TWELVE ACRES OF LAND IN CULTIVATION, WITH A DWELLING-HOUSE THEREON, DURING THE YEAR 1830, THE QUANTITY OF RESERVATIONS MADE AND PROVIDED FOR SUCH PERSONS BY ARTICLE XIX OF THE TREATY OF 1830.

The *nineteenth* article of the treaty has been set out in the statement of the case, and it is unnecessary to quote it. In respect to its provisions it may be observed as follows:

1st. That article made specific reservations for the benefit of *nine* persons, who are named in the first clause of the article.

2d. "And that others not provided for may be provided for, *there shall be reserved*" the several quantities of land specified in said article to those Choctaw heads of families who had during the year 1830 a specific number of acres of land in cultivation, with a dwelling-house thereon.

3d. There were reservations assigned by the treaty to *sixteen hundred* heads of families in the *five* different classes, whose reservations were to depend upon the number of

acres of land such number of persons had in cultivation, with a dwelling-house thereon, in 1830.

4th. The quantity of land reserved to said sixteen hundred heads of families by the treaty was *four hundred and fifty-eight thousand four hundred acres.*

Finding IV, Record, p. 55.

7 Stats. at Large, pp. 336, 337.

5th. That "the several reservations secured under this article may be sold with the consent of the President of the United States; but should any prefer it, or omit to take a reservation for the quantity he may be entitled to, the United States will, *on his removing,* pay fifty cents an acre *after reaching their new homes,* provided that, before the 1st of January next, they shall adduce to the agent, or some other authorized person to be appointed, proof of his claim, and the quantity of it."

7 Stats. at Large, p. 337.

6th. That the said *five* classes were assigned reservations to the extent of one hundred and thirteen thousand six hundred and eighty acres of land. The number of persons to whom the above number of acres of reservations was assigned was *seven hundred and thirty-one.*

Finding IV, Record, pp. 54, 55.

7th. There were seventeen hundred and sixty-three (1,763) Choctaw heads of families who, "during the year 1830, had from two to twelve acres of land in actual cultivation, with a dwelling-house thereon." Reservations were assigned to three hundred and fifty persons of the above class to the extent of twenty-eight thousand (28,000) acres. There were fourteen hundred and thirteen (1,413) Choctaw heads of families who had, "during the year 1830, from two to twelves acres of land in actual cultivation, with a

dwelling-house thereon," *who received no part of the four hundred and fifty-eight thousand four hundred acres reserved for satisfying cultivation claims, as provided in said article.* The said fourteen hundred and thirteen (1,413) Choctaw heads of families were entitled, under the said article, to one hundred and thirteen thousand and forty (113,040) acres of reservations.

Finding IV, Record, pp. 55, 56, 57, 58.

It is evident that it was the purpose of this article of the treaty *to satisfy all cultivation claims.* This may be inferred from that language which declares it to be the purpose of this article "*to provide for others not provided for.*" The *fourteenth* article had provided for those who were to remain in the ceded territory, and take the reservations provided by that article.

The *nineteenth* article was intended to provide *indemnity* for such as should desire to abandon their home and improvements, and remove to the Choctaw country west of the Mississippi River. In order to be entitled to receive any land under that article, the reservee must have had a certain quantity of land "*in actual cultivation, with a dwelling-house thereon,*" during the year in which the treaty was made. These reservations were required to be so located as to include that part of the improvement which contained the dwelling-house. It was also provided that the reservations secured under this article might be sold with the consent of the President of the United States, or be abandoned and relinquished to the United States by the reservees, and the United States would, in consideration of such relinquishment, pay to said reservees fifty cents an acre after the reservees had "*reached their new homes.*" The reservee, under that article, was required to have both land in *actual cultivation* and a dwelling-house thereon. The number of acres to which the reservee became entitled depended entirely upon the number of acres he had in *actual*

cultivation, with a dwelling-house thereon. If he had "from two to twelve acres" in actual cultivation, and a dwelling-house thereon, he became entitled to a reservation of *eighty* acres. There was no condition to the existence of that right in the reservee, except "actual cultivation and a dwelling-house."

The parties to the treaty evidently supposed that, by making provision for *sixteen hundred*, all would be provided for who intended to emigrate, and by that act abandon their dwelling-houses and improvements. There is no doubt that *four hundred and fifty-eight thousand four hundred acres* of land was set apart for the purpose of providing indemnity for those who were to abandon their improvements and remove west. It was not the purpose or intent of the treaty to deprive any Choctaw head of a family of compensation for the improvements he was to abandon upon his emigrating west of the Mississippi River. It is evident from the record that there was a sufficient quantity of land dedicated and set apart by the *treaty* to satisfy and discharge all of these *cultivation* claims, and it is equally clear that both parties supposed that ample provision had been made in the treaty for the satisfaction of *all* of said claims. Ample provision was made in respect to the quantity of land reserved for that purpose, but not in respect to the *number* specified in the treaty, because, as to the *number*, the limitation was sixteen hundred. This limitation resulted from a mutual mistake of fact, in respect both to the number who would emigrate and abandon their homes and improvements, as well as to the number who had "from two to twelve acres of land in cultivation, with a dwelling-house thereon."

Those Choctaws, for whom these reservations were intended, evidently understood that all of those "Choctaw heads of families" who had the requisite improvements, and who abandoned the same by emigration, were entitled to the reservations provided in that article, *to the ex-*

tent of the quantity of land reserved for all of the five classes. The Choctaw commissioners, in the negotiations which preceded the conclusion of the treaty of 1855, claimed for losses on account of the disallowance of the claims of said *fourteen hundred and thirteen* Choctaw heads of families to said reservations, the sum of six hundred and five thousand ($605,000) dollars. If it can be reasonably inferred, either from the treaty itself, or from the circumstances which attended its formation, that the Choctaws understood that these reservations were to be granted to all who should relinquish their improvements, *and emigrate west*, then the court will give that construction to its provisions, which the Choctaws themselves gave to it, or understood it to mean. Such construction would be justified by the language of this court in the case of *Worcester* v. *State of Georgia*, 6 Peters, 652, where this court said:

> *How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.*

In finding I, Record, p. 53, is to be found the preliminary or *informal* proposition out of which this article was formed. There the proposition is to provide for *seventeen hundred* Choctaw heads of families "*who will remove.*" It is evident that "*removal*," as well as "cultivation," was one of the conditions upon which the right to these reservations was made to depend, *as understood by the Choctaws;* and that having "removed," the Choctaws by that act became entitled to compensation—which was to be made by the grant of a reservation dependent for its extent upon the number of acres of land in cultivation, "with a dwelling-house thereon"—for the homes and improvements surrendered by removal.

If these were the rights of the said fourteen hundred and thirteen Choctaw heads of families who received no reservations, then it is obvious that they were legitimate

subjects for adjudication and decision by the Senate, under article XI of the treaty of 1855. If it was either "JUST, FAIR, OR LIBERAL" to allow and pay said reservees for the improvements abandoned by them on removal, then it was clearly within the jurisdiction and power of the Senate to adjudicate and allow them.

The Senate considered the claims of said fourteen hundred and thirteen Choctaw heads of families *equitable* and just, as appears from the following language:

> It is obvious that the operation of the nineteenth article was, *contrary to the intention of both parties to the treaty, very unequal and unjust. One party who emigrated was just as much entitled to have the benefit of and pay for his improvements as another.* In regard to that, it was peculiarly the case that equality alone could be equity. *In consequence of a mutual error,* the larger number received nothing for their improvements, and the United States profited by the error to a corresponding extent. They had devoted 487,200 acres of land to the use of compensating for such improvements, of which 127,040 acres only were used, leaving as a profit to the United States 360,160 acres.

This injustice and inequality of compensation to persons of the same class was a matter of complaint at the time the treaty of 1855 was negotiated. The claims of these persons were within the terms of the submission to the Senate, and were, therefore, to be considered upon terms "*just, fair, and liberal.*" The *intention* of the parties to the treaty of 1830 was to be carried into effect by making provision for compensation to all of those who removed and abandoned their reservations, instead of a part of such persons. This was to be done upon the theory that there had been "a mutual mistake of fact" in putting restrictions upon the *number* who should be compensated for their improvements, since that article of the treaty, on its face, shows a purpose to apply as much as 458,400 acres to the satisfaction of the claims of those Choctaw heads of families

who should remove from their improvements. It shows the purpose to satisfy *all* of the five classes alike—the purpose to satisfy those of the *fifth* class, entitled to *one-eighth* of a section each, as much as the purpose to satisfy any other, because a sufficient quantity of land had been dedicated by the treaty to that object.

The appellant contends that the equitable and just effect of the treaty of 1855 was a covenant by the United States, paid for by the appellant, *to correct the said mistake of fact*, and to satisfy the claims of the said *fourteen hundred and thirteen* of the *fifth* class according to the measure of indemnity provided in the *nineteenth* article to persons of that class.

That if the award and judgment of the Senate was, for any reason, set aside and ignored by the Court of Claims in these proceedings, *and not otherwise*, that *then* the said court should allow indemnity to those *fourteen hundred and thirteen* Choctaw heads of families who were excluded from the right to compensation for their improvements by the construction and administration of that article by the officers and agents of the United States, because it was "JUST AND FAIR" that such indemnity, for said persons, should be provided. The Court of Claims gave no effect to the provisions of the treaty of 1855 in its adjudication of this class of claims. It decided then *by the strict letter of the provisions of the nineteenth article*, although the facts which are shown by the record, as well as the purpose of that article, show that it was the *intention* of both parties to the treaty to provide satisfaction for improvements to *all* those Choctaw heads of families who came within the requirements of that article, by having the required improvements. The construction which the Court of Claims put upon the obligations of the United States under that article defeated its obvious intention and purpose. It put a narrow, technical, and unjust construction upon the terms and provisions of the nineteenth article of the treaty of 1830,

and gave no effect to the provisions of the *eleventh* article of the treaty of 1855. It violated that rule of construction which this court announced in the case of *Noonan* v. *Bradley*, 9 Wall., 407, where the following language was used:

> If there were any doubt as to the construction which should be given to the agreement of the intestate, that construction should be adopted which would be more to the advantage of the defendant, upon the general ground that a party who takes an agreement prepared by another, and upon its faith incurs obligations, or parts with his property, should have a construction given to the instrument favorable to him, and upon the further ground that when an instrument is susceptible of two constructions—the one working injustice, and the other consistent with the right of the case—that one should be favored which standeth with the right.

The Court of Claims, in obedience to these principles, ought to have allowed to the said *fourteen hundred and thirteen* Choctaw heads of families whose claims were embraced in the said nineteenth article of the treaty of 1830 the sum of *two hundred and nine thousand one hundred and twenty-four dollars* ($209,124.)

I. IF THE RIGHTS OF THE APPELLANT SHALL BE ADJUDGED WITHOUT REGARD TO THE ADJUDICATION AND AWARD OF THE SENATE, AND IF THE RELEASE EXECUTED UNDER THE ACT OF JULY 21ST, 1852, SHALL BE HELD TO BE BINDING ON THE APPELLANT, THEN THE APPELLANT IS ENTITLED TO BE PAID INTEREST ON THE SCRIP WHICH WAS AUTHORIZED TO BE ISSUED TO ELEVEN HUNDRED AND FIFTY-FIVE CHOCTAW HEADS OF FAMILIES IN LIEU OF THEIR RESERVATIONS, AND WHICH WAS NOT DELIVERED, BUT FUNDED UNDER THE PROVISIONS OF THE ACT OF MARCH 3D, 1845, FROM THE DATE WHEN THE SAME WAS AUTHORIZED TO BE ISSUED, INSTEAD OF FROM THE DATE WHEN THE SAID CHOCTAW HEADS OF FAMILIES ARRIVED IN THE CHOCTAW COUNTRY WEST OF THE MISSISSIPPI RIVER.

The Court of Claims, having ignored all of the provisions of the treaty of 1855, proceeded to consider those claims of the appellant arising, out of the treaty of 1830, which had been merged in the adjudication and award of the Senate. The appellant contended that, because the act of March 3d, 1845, had provided for the funding of the scrip issued *in lieu of reservations which it was impossible for the United States to grant*, as required by the *fourteenth* article of the treaty of 1830, the claim for *interest* on said scrip was a claim "arising out of treaty stipulations with the Choctaw Nation, and came within the principles of the cases of *Great Western Ins. Co.* v. *United States* (112 U. S. R., 193, 197) and of *Alling* v. *United States* (114 U. S. R., 562), and that such interest ought to have been computed from the date of the issue of the scrip rather than from the *date of the delivery of the unfunded half of the scrip to the reservee.*

The Court of Claims denied the right of the appellant to recover this interest for the following reasons:

Numerous decisions have been cited upon the question of the payment of interest, which in this connection it is unnecessary to quote, for, if what we have assumed as the legal effect of the act of 1852, and the release executed by the Choctaw Nation as to individual claims under the fourteenth article, be correct, interest being an incident of the claims under said article, then such release and adjustment under the act of July 21, 1852, is a complete answer to the claim of the petition upon the item of interest.

As was said in another connection, the same authority which now brings this suit, assuming to represent the individual reservees, discharged the United States from all liability growing out of a claim under the fourteenth article; and the interest claim, being an incident, falls with the original cause of action.

Record, p. 122.

It is not necessary to make further suggestions in regard to the validity or binding force in law of the release executed under the requirements of the act of July 21st, 1852. If that release were held to be binding and conclusive upon the appellant, it is not in terms, or, by a fair construction of those terms, sufficient to preclude the appellant from recovering the amount of unpaid interest on the *funded scrip*, which the United States redeemed by paying the principal, under the provisions of the act of July 21st, 1852. The *condition* upon which the principal of the funded scrip, estimated in *money*, was redeemed and paid, was, that the *payment of the principal* should be approved and ratified as "*a final release of all* CLAIMS *of such parties under the fourteenth article of said treaty*," *i. e.*, the treaty of 1830.

The language of that release can only be held to be a release of all *claims to reservations* under that article of said treaty which had become merged in the scrip which had been

issued *in lieu of the reservations which the United States found itself unable to grant.* The claim under the fourteenth article of the treaty of 1830 was *a claim to a reservation,* and the claim to a reservation, as represented by the funded scrip, was *all* that was covered by the release. It did not include or refer to any interest which had accrued—and had remained unpaid—on the funded scrip between March 3d, 1845, and July 21st, 1852.

The cause of this deficiency in the payment of interest on this funded scrip resulted from its retention by the United States, as a means for coercing the removal of those to whom said scrip had been awarded under the act of August 23d, 1842. This funded scrip was that one-half of the scrip which was deliverable in the Choctaw country west of the Mississippi River. When, therefore, the United States changed the law, and *funded,* instead of delivering, that one-half of the scrip deliverable *west,* it would seem to require the payment of the interest on the funded scrip from the date of its issue, if not from the date of the funding act.

The Senate Committee on Indian Affairs, in its report submitted previous to the award of the Senate, considering the question of the right of these scrip-holders to receive this interest, used the following language:

> The act of March 3d, 1845, provided that one-half of the scrip, deliverable on the Indians' arrival west, should not be delivered to them, but, instead thereof, the amount of the same should "carry an interest of five per cent.," which the United States thereby agreed to pay "annually to the reservees, under the treaty of 1830, respectively, or to their heirs and legal representatives forever."
>
> The Indian Office decided that this interest did not commence to run until after the arrival of each Indian west. The amount of interest paid under this decision was less, by the sum of $150,989.70, than it would have been if computed from the date of the act of 1845. The Choctaws claim that it ought to have been so computed, and it seems to the committee that, as the act provides that the sum

"shall carry an interest of five per cent.," without any further definition of the time when such interest should commence, it ought, by the ordinary rules of law and construction, to have been held to commence from the date of the act; especially as the postponement of the payment of the scrip until after the removal west was itself in contravention of the rights of the parties under the treaty. In equity it would run from the 24th of February, 1836, when, according to the treaty, the rights of the claimants to *fee-simple* titles became complete.

Appendix, pp. 127, 128.

This claim for interest on the funded scrip, upon the theory which the court adopted in its adjudication of this cause, ought to have been allowed, for the following reason:

Because it was not within the terms of the release executed by the authorities of the Choctaw Nation, as required by the act of July 21st, 1852.

K. THE APPELLANT IS ENTITLED TO RECOVER INTEREST ON THE SEVERAL ITEMS WHICH MADE UP THE AMOUNT FOR WHICH THE COURT OF CLAIMS RENDERED JUDGMENT, FROM THE DATE WHEN SAID AMOUNTS RESPECTIVELY BECAME DUE AND PAYABLE.

The *sixteenth* assignment of error is as follows:

The Court of Claims erred in refusing to allow interest on the several amounts for which it rendered judgment in favor of the appellant from the date when said amounts severally and respectively became due and payable by the United States.

The engagements and obligations of a *treaty*, and the measure of indemnity for failure to fulfill its obligations, are always to be interpreted and determined by the principles of the public law, and those obligations are not to be lim-

ited or changed by the provisions of statute or municipal code, or by any custom or practice of any department of either government that may be a party to the treaty. No statement of this proposition can equal in clearness or force of language in which it was stated by Mr. Webster in his opinion on the Florida claims, under the treaty between the United States and Spain concluded in 1819. In that opinion, speaking upon this question, and of the inviolable character of a treaty obligation, he said:

A treaty is the supreme law of the land. It can neither be limited, nor restrained, nor modified, nor altered. It stands on the ground of national contract, and is declared by the Constitution to be the supreme law of the land, and this gives it a character higher than any act of ordinary legislation. It enjoys an immunity from the operation and effect of all such legislation.

A second general proposition, equally certain and well established, is that the terms and the language used in a treaty are *always* to be interpreted according to the law of nations, and not according to any municipal code. This rule is of universal application. When two nations speak to each other, they use the language of nations. Their intercourse is regulated, *and their mutual agreements and obligations* are to be interpreted by the code only which we usually denominate the public law of the world. This public law is not one thing at Rome, another at London, and a third at Washington. It is the same in all civilized states; everywhere speaking with the same voice and authority.

Again, in the same opinion, Mr. Webster used the following language:

We are construing a treaty, a solemn compact between nations. This treaty is to be construed and interpreted throughout its whole length and breadth — in its general provisions, and in all its details; in every phrase, sentence, word, and syllable in it—by the settled rules of the law of nations. No municipal code can touch it, no local municipal law affect it, no practice of an administrative department come near it. Over all its terms, over all its doubts,

over all its ambiguities, if it have any, the law of nations "sits arbitress."

This rule is laid down by Rutherforth in these terms:

In estimating the damages which any one has sustained, when such things as he has a perfect right to are unjustly taken from him, or WITHHOLDEN, or intercepted, we are to consider not only the value of the thing itself, but the value, likewise, of the fruits or profits that might have arisen from it. He who is the owner of the thing is likewise the owner of the fruits or profits. So that it is as properly a damage to be deprived of them as it is to be deprived of the thing itself.

Rutherforth's Institutes, Book I, chap. 17, sec. 5.

Mr. Wheaton states the rule of the international law, in regard to the obligation to pay interest, as follows:

If a Nation has taken possession of that which belongs to another, IF IT REFUSES TO PAY A DEBT, to repair an injury, or to give adequate satisfaction for it, the latter may seize something of the former and apply it to its advantage, till it obtains payment of what is due, together with INTEREST and damages.

Wheaton on International Law, p. 341.

Domat states the law of reason and justice on this point as follows:

It is a natural consequence of the general engagement to do wrong to no one that they who cause any damages, by failing in the performance of that engagement, are obliged to repair the damage which they have done. Of what nature soever the damage may be, and from what cause soever it may proceed, he who is answerable for it ought to repair it by an *amende* proportionable either to his fault or to his offence, or other cause on his part, and to the loss which has happened thereby.

Domat, Part I, Book III, Tit. V, 1900, 1903.

The municipal rule and usage is, we concede, that the Government is not bound to pay interest on private claims

or demands, however just they may be, although they may have been due and demandable long before payment.

This rule and usage are founded on the theory that the Government is always ready to pay its just obligations, and that delay of payment is chargeable to the *laches* of the claimant, who, by his negligence in the presentation of his claim, forfeits his right to interest.

But this rule and usage can have no just application to treaty claims, because the reason upon which the usage and rule rest entirely fails. In all treaty cases the claimant is powerless even to present his claim until his Government negotiates a treaty, enacts a law to carry it into effect, and provides a tribunal before which his claim may be adjudicated.

In this case the fourteenth-article claimants lost their reserved homes in 1836, and never, until 1855, was there provided a tribunal to which they might, even indirectly, through the Nation of which they were citizens, present their claims for adjudication. Thus it appears that a period of nineteen years elapsed, during which time they were powerless to assert their right to indemnity. This resulted from no *laches* or default on their part. That they should be allowed interest, as a mitigated measure of damages, is too obvious to require argument.

It is not interest proper which is claimed, although it is sometimes designated by that name. It is an annual percentage for a given period, adopted *as a measure of the damage* for the injury resulting from a delay of payment, for which the claimant is in no way responsible.

That this damage is a just and necessary part of the injury, no one has ever questioned. It is peremptorily required by the well-established principles of the public law, and has been recognized and contended for by this Government under every treaty of indemnity concluded between this Government and foreign nations. The United States have persistently contended for damages, measured

by a rate of interest, under every treaty in which foreign nations have stipulated for satisfaction or indemnity for property taken or destroyed in violation of the law of nations, or treaty compact.

1. It was claimed by the United States, and allowed under the seventh article of the treaty of November 19th, 1794, between the United States and Great Britain.

American State Papers, Foreign Relations, vol. 2, pp. 119, 120, 387, 388.

2. Under the twenty-first article of the treaty of October 27th, 1795, between Spain and the United States.

American State Papers, Foreign Relations, vol. 2, p. 283.

3. The Emperor of Russia, upon submission of the controversy between the United States and Great Britain, as to the construction of the treaty of Ghent, decided that the United States were entitled "to a just indemnification from Great Britain for all private property carried away by the British forces."

Under this decision, the United States claimed the value of the property carried away, and interest on that value from the date of the asportation. Mr. Langdon Cheves, the United States Commissioner, said: "The claim is not for interest *eo nomine;* it is adopted as a mitigated rule of damages, compensation, or indemnification, founded on the pecuniary value of the article withheld; in that case the common law and the civil law are both clear in allowing reparation of the loss of the use of the thing withheld, from the commencement of the tortious detention." "*The rule of the public law is the same.*"

In this case, the opinion of Attorney-General Wirt was asked for by the Secretary of State, and, in reply, he affirmed the rule of law as laid down by Mr. Cheves.

Opinions of Attorneys-General, vol. 1, p. 499.

Mr. Clay, Secretary of State, in his communication of April 15th, 1826, addressed to Mr. Vaughn, the British Minister, most emphatically claimed "that interest is a fair and just component part of the indemnification which the covenant stipulates.

It was finally agreed that the gross sum of $1,204,960 should be paid by Great Britain as full indemnity. Out of this sum the United States paid the individual claimants the value of the property carried away, *with interest on that value from the date of the asportation.*

4. Under our treaty of indemnity of 1832, with the Two Sicilies, the United States received 2,115,000 ducats, for spoliations by King Murat. Of this sum 7,679 ducats were to be applied to reimburse the United States for expenses incurred, and the residue to indemnify individual claimants.

When the United States indemnified the individual claimants, they paid each claimant the full value of his property at the date of the loss, and interest on the same from the date of the injury.

5. Under our treaty of 1839 with Mexico, for the adjustment of claims of citizens of the United States against Mexico, each claimant was awarded the value of his property taken, with interest from the date of the asportation.

In the cases of the *Encomium* and *Comet*, United States vessels, cast upon the British West India Islands by stress of weather, with slaves on board, the slaves were seized and liberated by the colonial authorities. For the loss to the owners of the slaves seized and liberated, the United States, in behalf of the owners, claimed indemnity or satisfaction from the British Government.

Mr. Stevenson, our Minister at the Court of St. James, in his communication of February 8th, 1837, addressed to

Lord Palmerston, His Majesty's Minister of Foreign Affairs, claimed that—

* * * * * * * *

Besides the value of the slaves at the port of destination, damages or interest, from the time of their seizure, will constitute a part of the compensation claimed, upon the principle that a just indemnity in such cases must include not only the return of the property lost (if to be had), or its value (if not), but compensation for the detention, in the shape of damages or interest.

On this point the American Minister, Mr. Stevenson, acting under full instructions from his Government, makes the following observations and lays down the following propositions:

1. That the claimants have the same right to interest on the value of these slaves that they have to the value of the slaves themselves, and that, too, from the period of their seizure and detention. * * *

5. That, although under the laws of Great Britain and the United States, it is admitted that in transactions between individuals, interest *eo nomine* would not be due on unliquidated demands of a nature purely and exclusively pecuniary, except from the period of their liquidation, yet it is equally true that by those laws, when reparation is sought for the loss of property, (in cases like the present,) the value of the property, together with an equivalent for the use of it, from the commencement of an illegal detention, *is always allowed.*

6. That these are principles sanctioned as well by the law of nations, as those of the civil and common law, by the authority of precedents between Great Britain and the United States, a few leading references will satisfactorily show. To these the undersigned begs leave to refer Lord Palmerston. * * *

It (interest) has, moreover, never been refused in claims like the present, where a money equivalent has been substituted as a compensation for property wrongfully withheld, and for which the party had agreed to make reparation.

The most elaborate discussion of the right to interest, as a necessary element of indemnity in cases like this, took place before the Geneva Tribunal of Arbitration, sitting to hear and determine differences between Great Britain and the United States, under the Treaty of Washington.

Sir Roundell Palmer, as counsel for Her Britannic Majesty, while he conceded the rule of the international law as claimed by the American counsel, nevertheless contended most strenuously, in an argument conspicuous for its plausibility and force, that under the peculiar circumstances of the case the application of the rule ought not to be insisted upon or allowed. We refer the court to his argument, in which it will be plainly seen that none of the "peculiar circumstances" relied upon by him to extricate his cause from the operation of that rule has any existence in the pending cause.

Geneva Arbitration, vol. 3, from pages 550 to 567, inclusive.

To that argument the American counsel made reply, which is found from pages 568 to 573, inclusive. This reply so clearly and fully states the rule here contended for, and the principles governing its application, that we quote some portions of it in support of what is here contended for. Commencing on page 568, the American counsel say:

We have had an opportunity to read the argument of Her Brittanic Majesty's counsel submitted to the tribunal upon this question, and now avail ourselves of the right, under the treaty, to reply to it, so far as such reply seems to us suitable.

It is important, in reference to this question, as we have heretofore had occasion to suggest in respect to other questions opened for discussion by the tribunal, to confine the argument within proper limits. By doing this in the present case we may very briefly dispose of much that occupies a good deal of space in the learned counsel's argument.

(*a*) The question assumes that a method of measuring the injury to the United States, and the indemnity therefor from Great Britain, has been adopted, which takes account of the losses suffered as of the dates (actual or average) when they were suffered, and fixes an amount in money which, if *then* paid to the sufferers, would, in the judgment of the tribunal, be an adequate, and no more than an adequate, indemnity for such losses to the sufferers. Upon this view of the capital sum, in respect of which the allowance or refusal of interest thereon is in question, (and no other view seems admissible,) it is impossible to raise any other points for debate than the following:

First. Is the delayed payment of a sum which, if paid at an earlier date, would *then* be only an adequate payment, still an adequate payment, without compensation for the delay?

There can be but one answer to this question. The earlier and the later payments cannot *both* be adequate, and not more than adequate, to the same obligation, unless they are equivalent to each other. But common sense rejects the proposition that a present payment of money and a delayed payment of the same sum are equivalent. They are not the same to the creditor or sufferer who receives the payment nor to the debtor or wrong-doer who makes the payment.

Compensation for the delay of payment is necessary to make present and delayed payments equivalent to each other, and each equal to the same obligation.

It thus being clearly impossible that earlier and later payments should be equivalent, whenever, in fact, only the later payment can be, and is to be, made, it must draw with it the compensation for the delay in the nature of interest, provided it is intended that the parties should stand, after the delayed payment, as they would have stood after an earlier payment.

Second. It will be readily admitted that this necessary compensation for delay in payment of a sum, which has been computed as a just payment, if made without any delay therein, cannot be justly withheld, unless there shall have been some fault on the part of the creditor or sufferer whereby the delay of the adequate payment is imputable to him.

We imagine that the principles of private law governing this question and justifying the refusal of interest for delay of payment all turn upon this, viz., that the debtor was ready to pay and the creditor was unwilling to receive.

At the top of page 572 they add:

The injuries for which Great Britain is to make indemnity happened in the years 1863 to 1865. The Treaty of Washington provides that the sum for their indemnity, as fixed by the tribunal, shall be paid within one year after the award.

What sum, payable as of this date, will be an indemnity for destruction of property occurring seven, eight, and nine years ago?

Manifestly, the question whether Great Britain should pay interest is an inseparable part of the question whether it is to make indemnity.

In conclusion, they add:

It is a matter of the *greatest interest to both nations* that the actual injuries to private sufferers from the depredations of the cruisers, for which Great Britain shall be held responsible, shall be fairly covered and satisfied by that portion of the award which shall be applicable to and based upon them. That this cannot be expected without an allowance of interest, is obvious.

A recognized right to indemnity, and a deficient provision of such indemnity, should be the last thing to be desired as a solution of this great controversy between these nations.

* * * * * * *

At page 44, volume IV, of the "Protocols of the Conferences" of the Tribunal, the following entry appears:

PROTOCOL XXIX.

The conference was held with closed doors, pursuant to adjournment. All the arbitrators were present.

The protocol of the last conference was read and approved, and was signed by the president and secretary of

the tribunal. Count Sclopis, as president of the tribunal, acknowledged the receipt, by the arbitrators, of the note presented by the agent of Her Britannic Majesty on the question of *interest*, and of the reply to the same presented by the agent of the United States.

The tribunal then proceeded to consider that question, and a MAJORITY OF FOUR TO ONE *decided that interest should be admitted as an element in the calculation for the award of a sum in gross.*

It may be well to inquire here what sum, payable at this time, will justly satisfy the losses suffered by the Choctaws in 1831 or 1836. Take for illustration the case of the one hundred and ninety-one heads of families and their children who complied with all the requirements of the fourteenth article of the treaty of 1830, to entitle them to reservations under that article. None of them have ever received either land, scrip, or money. The Court of Claims found, as a fact, that the reservations of which they were deprived amounted in the aggregate to 225,760 acres, of the value of $417,656, in 1830 and 1831, and for that amount they gave judgment. Assuming, for the sake of the argument, that the court was right in fixing the date and amount of the losses, it is still apparent, in the light of the authorities here cited, that the amount of the losses suffered at that date provides no adequate indemnity, if not paid until more than half a century has passed between the date of the injury suffered and the date when reparation is made. What is true of the claims of the one hundred and ninety-one heads of families and their children is equally true of all the other claims adjudged by the court in favor of the appellant. It is true, also, of the claims which the court adjudged against the appellant, but which it ought to have adjudged in its favor. In each and all interest should have been added and adjudged as a necessary component part of the indemnity. The Court of Claims allowed no interest, but rendered judgment for the damages resulting

from the injuries inflicted upon the Choctaws by the defendant, and the losses resulting therefrom, as though they had occurred but yesterday. In this, we submit, there is palpable and grave error.

It is no answer to this argument to say that the Court of Claims, in the exercise of its general jurisdiction in hearing and determining claims preferred by private individuals against the defendants, is by statute (section 1091, R. S.) prohibited from allowing interest on any claim unless upon a contract expressly stipulating for the payment of interest. This statute, we submit, applies only to cases brought within the general jurisdiction of the Court of Claims. Within this general jurisdiction private rights only are tried and determined, while the pending case involves questions purely national in their character; and it follows that these international questions should be adjudicated under the established principles of the public law, and should not be subjected to the usages or statutory rules, prescribed by either party, in the adjudication of private rights of a purely municipal character.

The issues here involved are not the issues that appertain to a controversy between private individuals. The issues here are not a controversy in relation to a mere pecuniary amount. They involve the great and overshadowing principles of the international law, as we conceive; and we are here representing, not individual interests merely, not individual rights and claims, but we are here representing two nations, respectively, who have differences concerning various subjects-matter, and which differences are now submitted to this tribunal.

They, in their national capacity, have no special interest in the pecuniary amount concerned or involved. The largest interest that they have is the interest as trustee and keeper of the national honor and the national duty which is imposed upon them by virtue of the relation which they sustain to each other, and which they respectively sustain

to all the nations of the civilized world. Hence the question of indemnity, or how much indemnity ought to be adjudged to the appellant in this case, is one of but minor importance. And we are profoundly impressed with this distinction, because it admonishes us that we are addressing a tribunal which sits here to determine under the principles of the international law, and to pronounce a judgment in this cause which will constitute a record to be placed and filed away in the great repository wherein are kept the records of the dealings and the doings of one nation with another.

This distinction is well founded in principle, and is most forcibly expressed by this court in the case of the State of Rhode Island against the State of Massachusetts, reported in 14th Peters, 257.

That was a controversy concerning the boundary-line between the State of Rhode Island and the State of Massachusetts, and grew out of submission and arbitration of differences between the colonial authorities many years prior to the litigation, of which the determination in this case was the conclusion. The court, in that case, lays down the principle which we have just mentioned, and say:

The case to be determined is one of peculiar character and altogether unknown in the ordinary course of judicial proceedings. It is a question of boundary between two sovereign States litigated in a court of justice; and we have no precedents to guide us in the forms and modes of proceeding by which a controversy of this description can most conveniently and with justice to the parties be brought to a final hearing.

Again, in the same case, p. 276, the court say:

I am inclined to think with the counsel on both sides that the great question in this case should not be decided by the rules for the settlement of private rights.

The high-litigant parties, and the nature of the controversy, give an elevation and dignity to the cause which

can never belong to differences between individuals. It may be a simple matter to determine where a line shall be run; but when such determination may draw after it a change of sovereign power over a district of country and many thousands of citizens, the principles involved must be considered as of the highest magnitude. *The question is national in its character, and it is fit and proper that it should be decided by those broad and liberal principles which constitute the code of national law.*

In this case, the subject-matter of controversy is between two nations—a controversy founded exclusively upon differences arising out of treaty stipulations. This controversy, from its very inception until final judgment shall have been rendered, must be guided, controlled, and illustrated in its various phases and forms by that code known as the international or public law.

If any doubt existed as to the right and duty of the Court of Claims to apply the principles and rules of the international law in adjudicating the questions of difference between the parties to this controversy, such doubt is removed by an attentive examination of the act from which alone its jurisdiction is derived. That act by its terms clearly shows that it was the legislative will that the court should in its adjudication apply the rules and principles of the international law to the exclusion of the rules governing it in the adjudication of private rights in cases falling within its general jurisdiction.

In the first place, by reference to the act, you will perceive that the Attorney-General is required to appear in this cause by the express provision of the act. Why should the Attorney-General, if this be a case within the ordinary and general jurisdiction of that court, be required in express terms to appear in this cause and represent the United States, when under the general act there is a general legislative provision which does require him to appear and represent the Government of the United States?

Again, it imposes upon him the duty to take an appeal in the event that judgment shall be rendered against the United States.

If this be a cause under the general jurisdiction of that court, it is his right and his duty, if he so exercises his judgment and discretion, to take an appeal, without any such special legislative provision as is found in the terms of the act.

Again, provision is made as to the manner in which this cause shall be presented to that court—that it shall be by a petition filed by the claimant, in which it shall state the facts which constitute its cause of action and upon which it relies for a recovery in this cause.

Why make that provision as to the manner in which that proceeding shall be commenced when there is a provision in the general law and under the rules of that court which prescribes in unmistakable terms the manner in which a proceeding shall there be commenced, under the general jurisdiction of that court?

Again, provision is made as to how and by whom the petition shall be verified; and why make that provision if this be a cause that comes within the ordinary jurisdiction of that tribunal?

The truth is, that it is not within the ordinary jurisdiction. The truth is, that it is *in contravention of the general jurisdiction of that court*, because, by the statute defining its general jurisdiction, treaty causes are expressly excluded. And this being a treaty cause—purely a treaty cause—having its origin in a controversy as to whether or not certain treaty obligations have been fulfilled, is submitted by this special act, and by that submission, and by the express provisions which are found in the jurisdictional act itself, it is made clear and apparent that it was the legislative intent that this cause should be litigated under the rules, the maxims, and the usages which are laid down

in that code which we denominate the public law of the world.

Still another view leading to the same result, namely, that the act creates an international jurisdiction wholly unknown to the general jurisdiction of the Court of Claims, and, indeed, of all other courts, is this: All individual citizens, and all States of the Union, are recognized by our laws as having civil capacity to maintain suits in the appropriate courts of the country. But this is not true of any Indian tribe. There is, to such tribe, no court of this country open by any law, and never was. So this court has repeatedly held. But this jurisdictional act opens to the tribe two courts. In this the jurisdiction is wholly unique, anomalous, and international, and international rules of adjudication, and these only, are, therefore, here appropriate.

CONCLUSION.

The appellant, the Choctaw Nation, submits, as the result of this discussion, that the following propositions are established:

1st. That the award and judgment of the Senate of the United States, made and rendered in favor of the appellant, under the authority of article XI of the treaty of June 22d, 1855, was not annulled and set aside by the provisions of the act conferring the present jurisdiction.

2d. That there was no infirmity of fact or law, in the said award and judgment, which authorized the Court of Claims to ignore or disregard the said award and judgment, as establishing a right of action in the appellant, the Choctaw Nation, to recover in this action the amount due

to the said appellant, under and upon said award and judgment.

3d. If the construction which was given to the jurisdictional act by the Court of Claims shall be held to be correct, and that the provision which granted "power to review the entire question of differences *de novo*," required that the court should ignore the award of the Senate, *then under such construction of the act*, it, by reason of requiring such review to extend to the *entire* question of differences, equally required that the court should ignore the alleged settlement and release growing out of transactions under said acts of 1837, 1838, 1842, 1845, and 1852; and that the court should allow, upon principles "*just, fair, and liberal*," the true value of all reservations of which the findings of fact show such heads of families were deprived, in contravention of the provisions of said fourteenth article, deducting from such just value of such reservations what said Choctaws are found by the Court of Claims to have received upon and on account of such reservations.

4th. If the award and judgment of the Senate was set aside, then the measure of damages which the said appellant was entitled to recover by reason of the failure of the United States to grant to said fourteenth-article reservees whose claims were examined, adjusted, and settled in the manner provided in the said acts of Congress, WAS THE VALUE OF SUCH RESERVATIONS AT THE TIME SUCH GRANTS IN FEE-SIMPLE WERE DELIVERABLE BY THE UNITED STATES, to wit, the VALUE OF SUCH RESERVATIONS ON THE 24TH DAY OF FEBRUARY, 1836, and not "THE AVERAGE VALUE OF THE LAND CEDED, and to which the reservations in said treaty applies, in 1830 and 1831," as found and declared by the Court of Claims.

5th. If the said award and judgment was set aside, then the Court of Claims should have allowed the appellant the

claims of the *fourteen hundred and thirteen* Choctaw heads of families who received no compensation for the improvements which they abandoned and surrendered to the United States, as provided in the nineteenth article of the treaty of 1830.

6th. If the award and judgment of the Senate was set aside, and if the appellant is concluded by the release executed, as required by the act of July 21st, 1852, then the Court of Claims should have allowed the appellant the amount due and payable on the scrip funded under the provisions of the act of March 3d, 1845, from the date when the same was issued, instead of from the date when the unfunded one-half of said scrip was delivered to said reservees.

7th. Even if the award and judgment of the Senate are set aside, and this court shall decide that the said *fourteenth* article claims are not re-examinable under the provisions of the jurisdictional act, or under the treaty of June 22d, 1855, still the appellant is entitled to recover, and to have made a part of the judgment to be rendered herein, the amount appropriated by the act of Congress approved March 2d, 1861, to wit, the sum of two hundred and fifty thousand dollars, with interest thereon at the rate of six per cent. per annum, for twenty years, from the 4th day of April, 1861.

8th. If the award and judgment of the Senate was set aside, then the said appellant is entitled to recover interest upon the several amounts due and payable by the United States from the date when the said several amounts became due and payable, as found by the Court of Claims, until the date of the payment thereof by the United States.

It follows, therefore, that the judgment of the Court of Claims should be reversed, and this cause remanded to

the said court, with an order to render judgment herein in favor of the said appellant, for the amount due, upon the principles of decision herein affirmed.

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Of Counsel.

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Supreme Court of the United States.

OCTOBER TERM, 1886.

THE CHOCTAW NATION, APPELLANT,
vs.
THE UNITED STATES. } No. 848.

THE UNITED STATES, APPELLANT,
vs.
THE CHOCTAW NATION. } No. 850.

APPEALS FROM THE COURT OF CLAIMS.

Brief for the United States.

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APPEALS FROM THE COURT OF CLAIMS.

Brief for the United States.

These are cross-appeals, presenting a long-standing controversy growing out of the several treaties and acts of Congress connected with the removal of the Choctaw Nation from the State of Mississippi to the territory west of the river Mississippi now occupied and owned by them.

The rapid settlement of the State of Mississippi having made the presence of these Indians extremely dangerous and embarrassing, retarding the march of civilization and threatening the extermination of the Indians themselves, it became necessary to make some arrangement with them by which those of them disinclined to give up the savage, nomadic life, and who were the cause of all the trouble, should be transplanted to a more congenial region, while those of them disposed to settle down and assimilate with the white population around them should be allowed to remain in the State.

It was in this spirit, and at the same time in furtherance of a cherished and long-established policy of the United States with reference to the Indians generally, as first indicated in the 15th Section of the Act of 26th March, 1804 (2 Stat., 289–291) that the treaty of Doak's Stand was entered into on the 5th September, 1820 (7 Stat., 210.

By that treaty (art. 1) the Choctaws cede a part of their lands to the United States, and, in

return, the United States (art. 2) cedes to the Choctaws the trans-Mississippi territory, "*where all who live by hunting and will not work may be collected and settled together*" (*Preamble*).

But, local attachment proving stronger than any sense of obligation under the treaty, as was, perhaps, quite natural, many of those who lived by hunting and would not work, refused to emigrate to the new territory provided for them by the treaty. As a consequence, the evil sought to be removed continued with aggravation, instead of mitigation, and so critical was the pass which matters had reached in 1830, that the then Secretary of War, General Eaton, left his post at Washington and went to a distant point to take part in the negotiations that resulted in the treaty of September, 1830, which, so far from deserving the strictures of the other side, rescued the Choctaws from an entanglement, which, it is easy to see, might have caused their dispersion and extinction.

It was the declared purpose of President Jackson, who knew the Indian character as he

did that of his own people, in opening negotiations afresh with the Choctaws, to secure some supplemental or complemental understanding with them by which the object of the treaty of 1820, namely, the removal beyond the Mississippi of that large part of the Nation that lived by hunting and refused to work, should be thoroughly accomplished.

As was said at the time, in behalf of the President, it was no lust of territory that prompted the reopening of negotiations, but a sincere desire to accomplish what was best for the Indian and the white man, by eliminating the disturbing element that *would* live in savagery, and planting it where it would be untrammeled by even the proximity of civilization, neither molesting nor being molested.

The way in which this great and beneficent object was secured by the treaty of 1830, so much reprobated and, we crave pardon for saying, so imperfectly appreciated, was by cession of all the residue of the Choctaw lands in Mississippi, and by planting the Indians minded to

abjure savagery and learn the arts of civilization within defined limits, and thus compelling those disinclined to submit to the restraints of civilized life to go where they could follow their bent without disturbing the happiness of others.

As we have said, the United States did not covet the land ceded, but was *compelled* to accept it in order to fulfill the intention of the treaty of 1820, which, be it observed, was negotiated in part by General Jackson himself It may be said in reply to the impassioned rhetoric which has been indulged in touching the alleged injustice of the Government in coercing the Indians to make a great concession of land without anything in return deserving the name consideration, we say it may be said in reply, that the consideration for the cession was *the salvation of the grantors themselves wrought through the instrumentality of the grantees.*

If, however, the United States paid nothing for the lands ceded, it restored some of them back again to such of the natives as desired to till them, and to the rest, whose only use for ter-

ritory was to range through it in quest of game or to commit depredations, it had already given in exchange more than an equivalent by the cession of 25,000,000 of acres by the treaty of 1820.

But for this treaty, which came near being defeated through the machinations of designing and the shortsightedness of well meaning men, these Indians, both pestilent and harmless, would have been given over, sooner or later, to undistinguished massacre. It was President Jackson's conviction that such would be the result of a further prolonged contiguity of civilization and barbarism in that region, that made him so urgent to conclude the treaty; and the sequel has shown the wisdom of his course.

But, lest it should be supposed that our account of the crisis in which the treaty of 1830 was made is over-colored, we would advert to the fact that in January, 1830, the legislature of Mississippi passed an act entitled "An act to extend the laws of the State of Mississippi over the persons and property of the Indians resident within its limits" (Session LL., 13th session, Statute

Laws of Mississippi, by Howard and Hutchinson, p. 76), which, together with acts passed at other times, was plainly intended to subvert utterly every species of Indian independence and autonomy, and, what may be considered far worse, threatened to bring on a conflict between the State and the Federal authority, it being the latter's duty, under the Constitution, to enforce its treaty obligations as the supreme law.

Seeing, then, that not only the Indians but the Federal Government itself was to be embroiled with the State of Mississippi unless the crisis should be properly met, it is not to be wondered at that those who foresaw these dire complications were instant in expostulation It would have been criminal in them to be otherwise.

It is quite irrelevant to speak of the Mississippi legislation as *brutum fulmen.* That legislation was calculated to command the most serious consideration, in that it manifested the determination of a resolute people to settle the Indian question for themselves; and it was a very proper thing for General Eaton and his fellow commis-

sioner to present to the Choctaws submission to State authority as the alternative of a refusal to come to terms, seeing that the President, determined as he was, might shrink from taking extreme measures against a State for the defense of Indians who, through stubbornness, refused to follow expostulations that were so clearly disinterested.

It would have been great folly, and shown decided unfitness for their duty, if these commissioners had omitted to urge upon the Indians this action of the State because they deemed it unconstitutional. Those who know the character of President Jackson can well imagine the effect upon him of such an omission if his envoys had returned from their mission empty-handed.

But, to be more particular, the treaty of 1830 provided, Article XIV, that each head of a family "*desirous to remain and become a citizen of the States*," and who should indicate such intention "within six months from the ratification of the treaty," should have one section of 640 acres, and one-half that quantity for each unmarried

child living with him over ten years of age, and a quarter-section for every such child under that age, and that a residence for five years from the ratification of the treaty, with the intention mentioned, should entitle him "to a grant in fee-simple."

But the treaty did not stop there, for it specially guarded the interests of the Indians who had built dwelling-houses and cultivated the land around them during the current year; to these, in proportion to the scale on which their operations had been carried on, and up to a given number, there was a liberal reservation of the land ceded to the United States, without requirement as to residence or citizenship, but, on the contrary, with the undertaking by the Government to commute the land for money in case of removal, within a certain time, beyond the Mississippi.

The attempt to carry out the 14th Article, as now interpreted by the appellant, miscarried, so that of 1,585 which, it is claimed, were entitled to the reservations guaranteed, only 143 received

them; which, after all, may have been a blessing in disguise, for it is open to much doubt if the disappointed ones were not better off with what they received from the Government in lieu of the land, including their removal across the Mississippi, than if they had gotten their specific rights under the treaty.

Seeing that it had been impossible, in large measure, to effect a specific execution of the 14th Article of the Treaty, owing to the rapid absorption of the ceded Indian lands by settlers, whose title was deemed paramount, and other causes, Congress, by various Acts, the principal of which are those of the 3d March, 1837 (5 Stat., 180), 22d February, ~~1838~~ 1838 (*ib.*, 211), and 23d August, 1842 (*ib.*, 513-516), made, or attempted to make, reparation to the Indians by giving them scrip entitling them to land equivalent in quantity to the reservations guaranteed by the treaty, and to be taken out of any part of the public domain subject to entry at private sale, in the States of Mississippi, Louisiana, Alabama, and Arkansas.

Under this legislation one-half part of the scrip was issued to 1,150 heads of families, but, owing to the act of Congress of the 3d March, 1845 (5 Stat., 777), the other half was never emitted, Congress having by that act directed that it should be treated as money at a valuation of $1.25 an acre, upon which interest at the rate of 5 per cent. should be paid annually.

And so matters stood until the 21st July, 1852, when Congress passed an act (10 Stat., 19) directing that no more payments of interest should be made, and appropriating an amount not to exceed $872,000 to satisfy the claims for scrip unissued, according to the various awards that had been made under the laws already referred to; but coupled with this appropriation was the *proviso*, "That the final payment and satisfaction of said awards shall be first ratified and approved as *a final release of all claims of such parties under the fourteenth article of said treaty*, by the proper national authority of the Choctaws, in such form as shall be prescribed by the Secretary of the Interior."

The whole amount appropriated was paid to the Choctaws, who, in return, executed the following release, in obedience to the law:

> Whereas, by an act of Congress entitled "An act to supply deficiencies in the appropriations for the service of the fiscal year ending the thirtieth day of June, one thousand eight hundred and fifty-two," all payments of interest on the amounts awarded Choctaw claimants under the fourteenth article of the treaty of Dancing Rabbit Creek, for lands on which they resided but which it is impossible to give them, shall cease, and that the Secretary of the Interior be directed to pay said claimants the amount of principal awarded in each case respectively, and that amount necessary for this purpose be appropriated, not exceeding eight hundred and seventy-two thousand dollars; and that the final payment and satisfaction of said award shall be first ratified and approved as a final release of all claims of such parties under the fourteenth article of said treaty, by the proper national authority of the Choctaws, in such form as shall be prescribed by the Secretary of the Interior: Now, be it known that the said general council of the Choctaw Nation do hereby ratify and approve the final payment and satisfaction of said awards, agreeably to the pro-

visions of the act aforesaid, as a final release of all claims of such parties, under the fourteenth article of said treaty.

A. NAIL, *Speaker.*
NOVEMBER 6, 1852.

Passed in the senate.

D. McCOY, *President.*

Approved.

GEORGE W. HARKINS.
GEORGE FOLSOM.

But outside the subject covered by the release, there were divers matters in difference between the Choctaws and the United States, one of which was of very great moment, being no less than a claim for the net amount of the proceeds of the cis Mississippi lands ceded to the United States by the treaty of 1830.

It was in this state of disagreement as to these various matters that the parties came together again and made the treaty of the 22d June, 1855 (11 Stat., 611–614), which after reciting, amongst other things, that "the Choctaws contend, that, *by a just and fair construction of the treaty of September 27th*, 1830, they are, of right, entitled to the net proceeds of the lands ceded by them to the

United States under said treaty," and have proposed that the same together with all other outstanding matters in difference, national and individual, should be referred to the Senate of the United States for "*final adjudication and adjustment*," goes on to provide (Article XI):

> The Government of the United States not being prepared to assent to the claim set up under the treaty of September 27, 1830, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:
>
> "First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and if so, what price per acre shall be allowed to the Choctaws for the land

remaining unsold, in order that a final settlement with them may be promptly effected; or

"Secondly. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and if so, how much?"

The only action taken by the Senate, under this article of submission, is embodied in the following preamble and resolutions, passed on the 9th of March, 1859:

Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians, provides that the following questions be submitted for decision to the Senate of the United States:

First, whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or

Secondly, whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all

their claims, national and individual, against the United States; and, if so, how much:

Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the first day of January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of $1.25 per acre; and, further, that they be also allowed twelve and a half cents per acre for the residue of said lands.

Resolved, That the Secretary of the Interior cause an account to be stated with the Choctaws, showing what amount is due them according to the above-prescribed principles of settlement, and report the same to Congress. (Senate Journal, second session Thirty-fifth Congress, page 493.)

The Secretary of the Interior stated and communicated to Congress the account called for by the second resolution of the Senate, bringing the Government in debt to the Choctaws, upon the basis assumed by the Senate, in the sum of $2,981,247.30 (R., pp. 28–30).

But the Senate took no action whatever on the Secretary's statement of account.

It was in this predicament of things that Congress passed the act of the 3d March, 1881 (21, Stat., 504), entitled "An act for the ascertainment of the amount due the Choctaw Nation," investing the Court of Claims with jurisdiction over the controversy, which act is in these words:

> Whereas the Choctaw Nation, for itself and in behalf of individual members thereof, make claim against the United States on account of various treaty provisions which it is alleged have not been complied with: Therefore,
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon; power is hereby granted the said court to review the entire question of differences *de novo*, and it shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of eighteen hundred and fifty-five; and the Attorney-General is hereby directed to appear in behalf of the Government; and if said court shall decide against the United States, the Attorney General shall, within thirty days from the

rendition of judgment, appeal the cause to the Supreme Court of the United States; and from any judgment that may be rendered the said Choctaw Nation may also appeal to said Supreme Court: *Provided*, The appeal of said Choctaw Nation shall be taken within sixty days after the rendition of said judgment, and the said courts shall give such cause precedence.

SEC. 2. Said action shall be commenced by a petition stating the facts on which said nation claims to recover, and the amount of its claim; and said petition may be verified by either of the authorized delegates of said nation as to the existence of such facts, and no other statements need be contained in said petition or verification.

The Petition.

Under this act of Congress the Choctaw Nation filed its petition (R., pp. 1–28) in the Court of Claims, setting up many claims and demands against the United States, including claims under Article XIV of the treaty of 1830, which are covered by the release above set forth, and which were supposed to be extinguished.

Inasmuch as the claims advanced in the petition will, in so far as involved in these appeals,

be hereinafter particularly treated in the order in which they are presented, it is deemed unnecessary to make other special reference to them.

The Demurrer.

The defendant demurred to so much of the petition as proceeded upon the resolution of the Senate under the agreement of submission contained in the treaty of 1855 as a ground of action. (R., p. 32.)

The court, while entirely clear that the resolution, in view of the terms of the act of Congress conferring jurisdiction and the acceptance of those terms by the petitioner, involved in its invoking the jurisdiction so conferred, had not the element of *res adjudicata*, and, therefore, that the matter covered by the resolution was entirely at large, nevertheless, ~~the court~~ declined to adjudge that the resolution might not be legally entitled to some weight in the case, treating it, at the same time, as a then unknown quantity—a *tertium quid*. (R., pp. 33–37.)

Plea in bar.

The demurrer having been overruled in this somewhat undefined way, the defendant, in bar of so much of the petition as sought to reopen the settlements between the parties, under the several acts of Congress already referred to, of claims under Article XIV of the treaty of 1830, pleaded the said settlements and the above given formal release of all such claims by the Choctaw Nation (R., pp. 38–41).

Replication.

The petitioner replied, that the release named in the plea was void, because executed under the stress of divers acts and proceedings of officers and citizens of the United States which either amounted to duress absolutely or relatively, in view of an alleged juridical relation of guardian and ward between this Government and the Choctaw Nation, it does not appear clearly which. (R., pp. 41–51.)

As both the plea and the replication must be noticed with some particularity further on, it is

unnecessary to do more than give their purport now.

Rejoinder.

To the replication the defendant put in a rejoinder in the nature of a traverse. (R., p. 51.)

In addition to these pleadings, although the record fails to show it, there was a general traverse by the defendant putting the case at issue as to all matters and things averred in the petition and not covered by the plea. So the learned court below states in its opinion. (R., p. 102.) Certainly the case was tried, both upon the law and the facts, as at issue in all parts and particulars, and has reached a stage at which it has become altogether immaterial whether it so appears technically or not.

The Findings of Fact.

The court made forty-three findings (R., 51–94), which will be specially mentioned in connection with the several points hereinafter mentioned.

Judgment.

The court rendered judgment for the petitioner upon several heads of his claim, and for the aggregate sum of $408,120.32.

Appeals.

From this judgment both parties appealed (R., p. 124).

ARGUMENT.

The Choctaw Nation's Appeal.

THE SENATE RESOLUTION: WAS IT AN AWARD?

Before treating the question of the conclusiveness of the Senate resolution as an award, we propose to consider, *whether that resolution was an award in any sense of the term?*

Undoubtedly the end proposed in resorting to arbitration, whether it be nations or individuals that are at variance, is the *final* adjustment of the questions submitted; but when that purpose is by repetition, as in the treaty of 1855, kept steadily in the foreground, and the differences to be com-

posed are inveterate and inflamed by imputations of violated faith, as were those named in that treaty, and the arbitrator chosen is so august a body as the one that performed that function under the treaty, we are led irresistibly to the conclusion that the high contracting parties were moved by an unusually profound desire that the award to be made should be a "full satisfaction," a "final settlement," a "final adjudication" of disagreements which had been embittering their relations for the better part of a century.

Finality is of the essence of a valid award. Without it, both the object of the parties and the policy of the law, that their suit should be brought to an end, are frustrated. As was said by Mr. Chief Justice Marshall, in Carnochan *v.* Christie (11 Wh., 446, 466), "the award ought to be *in itself* a complete adjustment of the controversies submitted to the arbitrators." And because, in that case, the arbitrators had determined that the parties on the one hand should be allowed a certain credit, provided they should convey to the party on the other hand a good title to certain

lands, but had failed to name a time within which such conveyance should be made, and so had left it entirely uncertain whether the credit should be allowed or disallowed, the court held the award void for this indefiniteness.

The idea of finality as a condition of validity in awards belongs to universal jurisprudence, forming a necessary element of the concept arbitration, and is, therefore, as essential to the validity of an award made by virtue of an international submission as to that of one made in ordinary cases. Indeed, this court has said, in a case involving the validity of an award made under articles to which the United States was a party, that it was "to be construed here [meaning on the court's prize side] and its effect determined by the same general principles which would govern it in a court of common law or of equity," (U. S. *v.* Farragut, 22 Wall., 419).

Now, upon looking at the preamble and articles XI and XII of the treaty of 1855 we find that the matters submitted for arbitration are the Choctaw Nation's claim of the net proceeds of

the sales of the lands ceded by them to the United States by the treaty of 1830, "together with the whole subject matter of their unsettled claims, whether national or individual, against the United States arising under the various provisions of the said treaty," and upon the matters so submitted two questions are propounded to the Senate for decision: *First*, whether the Choctaws are entitled to the net proceeds, "after deducting therefrom the cost of survey and sale *and all just and proper expenditures and payments under the provisions of said treaty;* and if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that a final settlement with them may be promptly effected;" and, *Secondly*, "whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and if so, how much."

Now the Senate resolved and adjudged that the Choctaws should be allowed the net proceeds of such lands as had been sold up to the January next preceding, after making the deductions re-

quired to be made by the treaty, the amount of which deductions, however, the Senate did not pass upon, but, after deciding the estimate per acre to be put upon the lands as yet unsold, referred the whole matter to the Secretary of the Interior with instructions to "cause an amount to be stated with the Choctaws, showing what amount is due them according to the above-prescribed principles of settlement, and report the same to Congress."

Now, it is manifest that this action of the Senate was *interlocutory*, essentially. It left the vital question of the amount due the Choctaws undetermined, and postponed the determination of that question indefinitely, and, as has been seen, the Senate never did determine it, although the account stated by the Secretary of the Interior, at their request, was before them for more than twenty years anterior to the passage of the act of March 3, 1881, referring the controversy to the Court of Claims.

Tried by the test applied by this court to judgments and decrees, there is no room for

doubt that the decision of the Senate was wanting in finality, (Grant *v.* Phœnix Ins. Co., 106 U. S., 431; Bostwick *v.* Brinkerhoff, *ib.*, 3).

But the so-called award is wanting in other fundamental particulars.

Neither the report of the Committee on Indian Affairs, to whom the matters submitted were referred by the Senate, nor the proceedings of the Senate at the time the alleged award was adopted show, nor is it pretended on the other side, that the United States was notified that the Senate was about to enter or had entered upon its judicial functions under the treaty, or that the Choctaws had made a presentation of their case or were adducing evidence to support it, or that the Senate having received the *ex parte* evidence offered by the Choctaws, were about to proceed to pronounce judgment on that evidence, without asking for any evidence on the part of the United States.

And not only so, but the proceedings of the Senate show that the action of that body must, in the nature of things, have been based on the

report of the Committee on Indian Affairs, and hurriedly adopted, without debate, and, manifestly, without consideration, in the confusion of the last hours of a session, so that the pretended award is, in fact, the judgment of the committee and not of the Senate.

Now, it is unnecessary to spend time in this court in doing more than to say (1) that notice is of the essence of every valid judicial act, and (2) that the function of arbitrator cannot be delegated.

It results, therefore, that the alleged award is void, (1) for the want of finality, (2) for the want of notice, and (3) because it is the judgment of the Committee on Indian Affairs, the Senate having performed no judicial function whatever as touching the same.

To meet the argument that the award is void because wanting in finality, it was said, in the court below, that if the Senate had done more than decide that the Choctaws were entitled to the net proceeds they would have gone outside

their commission. In other words, that the Senate had nothing to do with adjusting the balance due, and that the treaty had wholly failed to prescribe in what way or by whom the deductions claimed should be allowed. It is inconceivable that parties, striving, as were these parties, to put an end to controversy, should have committed such an oversight, and also inconceivable that the Choctaws should have been willing to leave to the United States, whose alleged want of faith they had been so long complaining about, to state the account, as was contended by the other side in the Court of Claims.

If the theory that the arbitrators were not to determine the balance due out of the net proceeds is correct, it is remarkable they were not directed to ascertain the value per acre of the lands sold as well as unsold, for it is difficult to comprehend how it was necessary in the one case and not in the other, except upon the idea that in awarding the net proceeds the arbitrators themselves must necessarily ascertain the exact balance, and so did not need to make a special

finding as to valuation, whereas such a finding was absolutely necessary as to the lands unsold to enable the United States to make the simple computation of what was due on these lands,—a matter no more requiring judicial sanction than the computation of interest on a judgment.

The award, if valid, has been set aside.

Supposing a binding award to have been made, we respectfully submit that the concurrent acts of the United States, in passing the statute of the 3d of March, 1881, on the one hand, and of the Choctaw Nation, in taking the benefit of that statute, on the other, amounted to a compact to do away the award and set the case completely at large again. This was the view of the Court of Claims, and is too obviously sound to admit of discussion.

In giving the Court of Claims jurisdiction in the premises, the act, as we have seen, provides, that the court shall have power "to review the entire question of differences *de novo*," which was at once a reference to the previous abortive

action of the Senate, and an indication of purpose that the Court should make a *new* determination; which purpose could only be effected by removing the action of the Senate out of the way; and to render this meaning still clearer, if possible, it is further provided, that the Court of Claims, in making up its judgment, shall not be *estopped* by the "*action*" or the "*award*" of the Senate.

Certainly language could not make plainer that Congress intended that the Court of Claims was to exercise its jurisdiction untrameled and uninfluenced by what the Senate had done. In no other way could the subject be reviewed *de novo*. Between the absolute estoppel and the free range of unfettered inquiry *there is no mid dle ground.*

Now, it was urged in the court below by the other side that while the award was not an estoppel so as to shut out further inquiry, it must nevertheless be treated by the Court of Claims as conclusive, unless overborne by evidence or argument or both; in short, that it must have all

the presumptions in its favor to which a judgment or decree under review in an appellate court is entitled.

But can an inquiry thus hampered—which starts with presumptions to be overcome—be the inquiry *de novo* contemplated by the statute? Did Congress intend to disparage the Senate by setting over it the Court of Claims as an appellate court, or did it merely intend to indicate that, as the Senate had so clearly shown that it was, from its constitution, unfitted for judicial duties requiring close and laborious investigation, it would be more satisfactory to set aside what that body had done, and put the matters in controversy in train to be dealt with in a judicial manner by an eminent tribunal?

The Senate having pronounced its own condemnation of the work it had done so hurriedly and perfunctorily, by withholding all action on the account stated by the Secretary of the Interior, it is not to be marveled at that the effort was made to annul the submission and appoint a new arbitrator.

It is certainly a remarkable position to take, that Congress intended to pay the deference to the Senate's award claimed for it by the other side in the court below, *notwithstanding the Senate itself could not be induced to make that award final*, and notwithstanding the United States was never cited to appear and make defense, and was never represented before the Senate or its committee!

Indeed, when we reflect upon the serious, not to say insurmountable, difficulties in the way of obtaining evidence of the transactions covered by the award, occurring as they did so long ago and in a wild frontier country, it is hardly possible that Congress could have intended to devolve on the United States the burden of disproving the premises supporting the award, without declaring its purpose in the most explicit terms.

But there is another cogent reason for holding that Congress did not intend that the award should have *any value* or *significance at all* on the hearing before the Court of Claims; and that reason is to be found in the radical difference

between the terms of the submissions to the Senate and the Court of Claims.

The treaty of 1855 commits to the Senate to determine, *inter alia*, whether the Choctaws "are *entitled* or shall be *allowed*" the net proceeds, but the act of Congress of March 3, 1881, refers the controversy to the judicial department of the Government to be determined in conformity to the fixed principles of jurisprudence.

It was competent for the Senate, acting under the treaty, to award the Choctaws the net proceeds upon any ground they saw fit, whether of law or of that general equity which is unconfined by principle and as variable as the measure of the Chancellor's foot, and is sometimes termed *arbitrium boni viri.*

And precisely in that way did the Committee on Indian Affairs of the Senate understand the Commission under which that body was acting, for, after laying down that the inquiry was not only whether the Choctaws were entitled to the net proceeds, "but also whether, *though* not legally so 'entitled' they shall still 'be allowed' them,"

they go on to declare that, in their opinion, the judgment of the Senate should be that the Choctaws *are not entitled in law to the net proceeds*, but that the same should be allowed them, nevertheless.

Now we ask, respectfully, if it is possible that Congress, in directing an inquiry *de novo* and unfettered by estoppel, could have intended that an award rendered by arbitrators expressly empowered to act, and who had acted, regardless of the principles of jurisprudence, should be a possible factor in the judgment to be pronounced by a court bound to proceed in accordance with fixed rules? It could never have been intended that the Court of Claims should render a judgment composed of elements not only incongruous but absolutely irreconcilable and repugnant—a judicial monstrosity. Indeed, if Congress had manifested such an intention it could not have effect, because it is the Constitution that has, by creating a judicial department of the Government, declared, *ex necessitate rerum*, that the courts constituting that department shall proceed

in all cases in accordance with the law of the land.

We submit, therefore, that the Court of Claims possessed no standard by which it could review or rejudge an award avowedly made in disregard of legal principle, and, therefore, that Congress must have intended that the award should be either an absolute estoppel or valueless for any purpose; and we submit, with deference, that it would seem impossible for the learned court below to have treated the award as *res adjudicata*, in the smallest sense, without, to the same extent, abdicating the function which Congress intended it to perform.

The special plea in bar.

As we have seen, the alternative claim, that the petitioner, if not successful in establishing the validity of the alleged award, was entitled to such additional indemnity for supposed violations of Article XIV of the treaty of 1830 as justice might require, was met by a plea in bar setting up the several acts of Congress passed

for the purpose of giving an equivalent for the reservations which were not set apart under the treaty, and the formal release of the Choctaw Nation of the 6th November, 1852, acknowledging satisfaction of all claims under Article XIV.

The replication to this plea sets up, in avoidance, that through the ill-usage of citizens and officers of the United States, the Choctaws had become reduced to so abject a condition when the release was executed that they were not free agents when they became parties to it; that when they executed the release they were in a state of helpless dependence on the United States, and so that the release was void; and that the release is no longer available as a bar or defense, because by the treaty of 1855 it is stipulated that the matters covered by the release should be set at large and as fully inquired into as though the release had never been made.

As there is nothing in the findings to show either that the United States extorted the release by duress, or took advantage of the helplessness or dependence of the Choctaws in securing that

instrument, it would be an indignity to the Government of the United States to discuss these points. We pass, then, to the only remaining point in the replication, namely, that the effect of the treaty of 1855 was to set aside all settlements under Article XIV, including the release.

This astounding pretension, that the Executive was so regardless of its duty to the public as to enter into a stipulation to undo settlements solemnly made by direction of Congress, and reopen the door for the litigation of matters as to which testimony must have almost entirely perished through death and failure of memory—matters that occurred in a wild frontier country and about which testimony was always difficult to obtain in the most favorable circumstances, cannot be allowed, certainly, unless established beyond doubt or controversy.

So unreasonable has this position seemed, that the Government has not felt warranted in entering upon the difficult and expensive preparations which will be necessary if the Court should hold the matter of the plea to be no bar. In

such an event the interests of the Government would require that the case should be remanded to the Court of Claims for such further proceedings as might be necessary to protect the United States.

It may be said further, in opening this branch of the discussion, that as it is by virtue of the treaty of 1855 that it is alleged that these settlements were canceled, it is remarkable that that instrument contains no declaration of any such intention, so that if such an intention was in the minds of the contracting parties, it was left by them to be *gathered by implication*, which would have been a very strange, not to say incomprehensible, way of disposing of a subject of so much moment to the Choctaw Nation, particularly when we remember how short a time it was between the execution of the release and the commencement of the negotiations which resulted in the treaty of 1855.

In the preamble of the treaty of 1855 we find it recited that the Choctaws had proposed to refer to the Senate their claim to the net pro-

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ceeds of the lands ceded by the treaty of 1830, "together with the whole subject-matter of their *unsettled claims*, whether national or individual, against the United States."

So far, then, as the preamble goes, there can be no valid pretension that claims that had been *settled* were within the terms of the submission.

Proceeding now to Article XI of the treaty, we find there a declaration that the United States desire that the "*rights and claims*" of the Choctaws should "receive a just, fair, and liberal consideration."

Now, unless a demand which had been at the time of the treaty solemnly settled comes under the category of "rights and claims" then existing and recognized by the United States as a claim then "unsettled," it is impossible to see how the language quoted can include claims which the Choctaw Nation had deliberately declared to be settled and extinguished less than three years before the treaty was executed, and which it is impossible to suppose the United States could have recognized as claims any longer.

And the same may be said of the words "all their claims, national and individual, against the United States," in the second paragraph of the same article.

It was very pertinently asked in the court below by our lamented and able and faithful friend, the late Mr. Simons, if in case the Choctaw Nation had been awarded and had received a gross sum, they would have treated the individuals embraced by the release as entitled to share in the amount awarded, upon the ground that their once settled claims had been revived by the treaty!

But it is said that the power given the Senate, by the second paragraph of Article XI, to allow the Choctaws a gross sum "in further and full satisfaction" of all their claims is an indication that the settlements covered by the release were to be reopened. In reply, we beg to say that this language has reference only to those treaty obligations or duties as to which the United States had done acts of performance which the Choctaws had claimed to amount merely to part fulfill-

ment, and as to which they had never solemnly admitted that the United States stood released and discharged.

The preamble of the treaty referring only to "unsettled" claims, it is not possible to enlarge the scope of the submission by resorting to implication unless the implication be insurmountable, which it manifestly is not in this case.

We maintain, therefore, that it would be against reason and precedent to deduce from the language quoted and relied on by the petitioner a conclusion so fraught with serious consequences to the United States.

And the view maintained by us derives full support, it will be seen, from the negotiations and proceedings leading to the treaty (see Findings XXIV–XXX, R., pp. 75–86), which show conclusively (*vide* Finding XXVII, R., p. 79, especially) that when the Government of the United States, acting upon a misunderstanding of what had been communicated by the Choctaw envoys, distinctly refused to negotiate with a

view to reopening settlements made under Article XIV, these astute envoys *distinctly disclaimed any such intention*, stating that their efforts were directed to a class of claims under Article XIV, which the acts of Congress for the satisfaction of the disappointed reservees did not embrace, namely, cases where the reservees were not registered, from the failure of the Government agent to record their applications, and were driven away, from the failure of the Government to protect them.

But nowhere in these negotiations *is the release mentioned*, or is there an intimation, even, that it was improperly obtained, although these envoys do have the rashness to say that their constituents were forced to enter into the treaty of 1830 (R., p. 75).

One thing is very certain, that if the view of the other side as to the release prevails, it will be manifest that it has been the United States more than the Choctaw Indians that has required protection.

The claim to the net proceeds.

We now come to the claim set up by the Choctaws to the net proceeds of the lands ceded to the United States by the treaty of 1830.

The court below not only declined to give effect to the Senate's so-called award for this claim, but, also, refused to recognize it as valid, independently of the pretended award.

A remarkable feature of this claim is, that although it is for the purchase money, so to speak, of largely over ten millions of acres of land, *the treaty by which the land was ceded makes no reference whatever to the demand*—an omission which is hardly explicable on any theory consistent with the petitioner's claim.

We are asked to believe that the United States in accepting this large cession agreed to sell the lands ceded and become a trustee of the net proceeds without using express language to indicate that purpose, *but leaving whole matter to be gathered by implication.*

Now when the United States in 1832 made an arrangement with the Chickasaws of the kind claimed to have been made with the Choctaws, the treaty contained a clear and explicit declaration of the trust, &c. (7 Stats., 381), and nothing whatever was left to inference. The cases are numerous in which the United States has by treaty stipulated to hold the proceeds of ceded Indian lands as trustee, and it is believed that there is not an instance in which the treaty has not been most explicit as to the assumption of the trust.

The Court of Claims deals with this part of the case in a summary way, treating it as obviously unmaintainable upon any provision of the treaty of 1830, and as the appellant has not included this head of its demand in its specifications of the grounds of appeal, except as resting on the so-called award of the Senate, we may assume that it is not sought by this appeal to disturb the judgment in its particular of denying validity to the claim, irrespectively of the pretended award.

And in so far as this claim for net proceeds is founded on the so-called award, the court below, looking into the reasons upon which the Senate proceeded, found it impossible to accept the award as a basis of judicial action, because it was, avowedly, made upon some indeterminate idea of doing justice in this particular case, irrespectively of the rights of the parties under the treaty, the Committee on Indian Affairs of the Senate, upon whose decision the Senate acted, without pretense of inquiry or examination for themselves, as we have already said, saying in their report, "But, upon the question whether the Choctaws are, upon the face of the treaty, *entitled* to the net proceeds of their lands, the committee still cannot find in the treaty itself sufficient warrant so to hold. The argument and the facts satisfy them that it *ought* to have been so, but not that it *is* so.'

The action of the Senate having been in disregard of the contract rights of the United States under the treaty of 1830, there was nothing left for the Court of Claims to do but to reject the claim for net proceeds as unfounded in law.

But it is said that Congress in the act of 3d March, 1861 (12 Stat., 238), appropriating $500,000 for the Choctaws under the 11th and 12th articles of the treaty of 1855, has expressly ratified and confirmed the Senate award. But, so far from that being the case, *no reference whatever is made to the award;* an omission not easily explained if Congress was of the opinion that the so-called award was binding on the United States. Indeed, the *proviso* with which the act concludes shows that Congress did not look upon the Senate resolution of 1859 as a fulfillment of the Senate's duty as arbitrator, for it declares that the sum appropriated shall be charged against the Choctaws in "*the future adjustment*" "*under the treaty.*" The theory of the other side is that the Senate was *functus officio* on passing the resolution of 1859. If that was so, the reference of Congress to further action under the treaty is difficult to explain.

Claims under Article XIX.

This article, after granting reservations to several members of the nation, *nominatim*, then

recognizes five classes of heads of families, graduated according to the number of acres they had cultivated during the then current year, and gives each individual of each class, *not exceeding a certain number*, so much land, upon condition that before the 1st of January next thereafter all claims to the reservations so given shall be duly proved by the claimants before some agent or other person, authorized in that behalf, to be thereafter appointed.

Now it turned out that the individuals of the nation answering the description of Class V exceeded the maximum number (350) of that class by 1,413, whereas there were deficiencies in some of the other classes, and notwithstanding the express restriction of the treaty as to the number of each class to be benefited, and the provision that where the number of a class overruns the limit, the chiefs, separately or together, shall determine who shall be rejected, it is claimed that the effect of this article was to set apart a quantity of land equal to what the aggregate of the maximum number of each class would have been

entitled to if the maximum in each class had claimed and proved, as required.

Upon some general notion of equity, quite regardless of contract right, as in the case of the claim for net proceeds, it is insisted that these 1,413 members of Class V *who did not put in their claims* within the time limited, and for that reason alone, are barred, are as much entitled to 80 acres apiece as the 350 who proved under the treaty, and so a claim is advanced for 113,040 acres, which it is averred should be estimated at $339,120.

It is assigned for error that this extraordinary pretension was not countenanced by the court below.

There is no latitude or benignity of construction by which this claim could be brought within the treaty, as the learned court below held, and as, we respectfully submit, scarcely admits of doubt.

Interest on bonds withheld.

By the act of 2d March, 1861 (12 Stat., 238), Congress, by way of making an advance to the

Choctaws, appropriated $500,000 for the purpose, one-half of which they were to receive in money and the other half in bonds, the sum appropriated to be charged against the Indians in "*the future adjustment*" of their claim to be made under the treaty of 1855.

That the bonds were not delivered pursuant to the law is sufficiently explained by the fact that very soon after the act was passed the Choctaws assumed hostile relations to the United States.

It is true that the Secretary of the Interior was "*authorized*" to issue these bonds by an act passed the 3d of March, 1871 (16 Stat., 570), but that authority was afterwards taken away by the act of the 14th of February, 1873 (17 Stat., 462).

The bonds withheld are not provided for in any treaty, and to set up a claim to them *nominatim*, or to the interest that would have accrued upon them, is to ask judicial enforcement of a gratuitous offer which had been long retracted. The court found small difficulty in rejecting this demand.

Interest on funded scrip.

This claim for interest set up by the Nation in behalf of the reservees under Article XIV of the treaty of 1880, whose scrip was funded under the legislation already mentioned, was by the Nation formally extinguished by the release of November, 1852, and, consequently, cannot be regarded as recognized by the United States as a claim against it at the time the treaty of 1855 was adopted. It is submitted that the Court of Claims committed no error in rejecting this demand.

Valuation of the land of reserves.

It is claimed that the court below committed error in fixing the value of the lands of reservees under Article XIV of the treaty of 1830 as of the date of the treaty and not as of the date of the expiration of the probationary limitation of five years.

But this cannot be admitted, for the requirement of a residence of five years by the treaty as the condition of a patent from the Govern-

ment for the fee simple did not prevent the title from becoming *inchoate*, the treaty operating to that extent, *proprio vigore*, from the time of the declaration of intention to become a citizen of the States, but at the same time this inchoate title was liable to be defeated by non-performance of the condition of five years' residence. In fixing the value of the land it was entirely proper for the court to take the initial date of the title as the time of valuation.

We submit, therefore, that the appellant has shown no sufficient cause why the judgment should be reversed.

The appeal of the United States.

The specification of error in support of this appeal is the allowance by the Court of Claims of $417,656 "for claims under the fourteenth article of the treaty of 1830" (R., p. 94).

It is submitted that this allowance is in the face of the release of November, 1852 (R., p. 40), which, after reciting that by the act of the 30th June, 1852, Congress had directed that interest

should be paid no longer on the amounts "awarded Choctaw claimants" under the fourteenth article of the treaty of 1830, and that the Secretary of the Interior had been directed by the said act to pay "*said* claimants" the amount awarded in each case, and that the final payment and satisfaction of *said* award shall be first ratified and approved as a final release of all claims of "*such* parties," under Article XIV, "*by the proper national authority of the Choctaws*," concludes in these words:

> Now be it known that the said general council of the Choctaw Nation do hereby ratify and approve the final payment and satisfaction of SAID awards, agreeably to the provisions of the act aforesaid, as a final release of all claims of SUCH parties under the fourteenth article of said treaty.

Now here we have a most solemn instrument put forth under the highest sanctions and bearing evidences of great particularity in its preparation, and which we are authorized to regard as meaning precisely what it says. Looking then at its discriminating use of the adjectives "*said*" and "such" we submit that there is hardly room

for doubt that Congress intended and that the Choctaw Nation intended that the payment referred to in the release should be the be all and the end all of every sort and description of claims under Article XIV.

By the express terms of the instrument it is at once an acknowledgment of satisfaction of "said claimants" in whose favor awards had been made under the acts of Congress, and a final release "of all claims of *such* parties under the fourteenth article of said treaty."

We submit, therefore, that the judgment of the Court of Claims is in violation of the true intent and meaning of the said release, and should be to that extent reversed.

WM. A. MAURY,
Assistant Attorney-General.

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SUPREME COURT, U.S.
FILED
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In the Supreme Court of the United States

OCTOBER TERM, 1886.

THE CHOCTAW NATION OF INDIANS, appellant,
vs.
THE UNITED STATES.
} Nos. 848, 850.

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TREATY OF 1820.

PREAMBLE.

Whereas it is an important object with the President of the United States to promote the civilization of the Choctaw Indians by the establishment of schools amongst them, and to perpetuate them as a nation by exchanging, for a small part of their land here, a country beyond the Mississippi River, where all who live by hunting and will not work may be collected and settled together; and whereas it is desirable to [211] the State of Mississippi to obtain a small part of the land belonging to said nation, for the mutual accommodation of the parties, and for securing the happiness and protection of the whole Choctaw Nation, as well as preserving that harmony and friendship which so happily subsists between them and the United States, James Monroe, President, * * * by Andrew Jackson * * * and Thomas Hinds, * * * on the one part, and * * * the Choctaw Nation, in full council assembled, on the other part, have * * * entered into the following articles, viz:

ART. I. To enable the President of the United States to carry into effect the above grand and humane objects, the mingoes, headmen, and warriors of the Choctaw Nation, in full council assembled, in behalf of themselves and the said nation, do, by these presents, cede to the United States of America all the land lying and being within the boundaries following, to wit: Beginning on the Choctaw boundary, east of Pearl River, at a point due south of the White Oak Spring, on the old Indian path; thence north to said spring; thence northwardly to a black oak,

standing on the Natchez road, about 40 poles eastwardly from Doake's fence, marked A. J., and blazed with two large pines and a black oak standing near thereto, and marked as pointers; thence a straight line to the head of Black Creek or Bogue Loosa; thence down Black Creek or Bogue Loosa to a small lake; thence a direct course so as to strike the Mississippi one mile below the mouth of the Arkansas River; thence down the Mississippi to our boundary; thence around and along the same to the beginning.

ART. II. For and in consideration of the foregoing cession on the part of the Choctaw Nation, and in part satisfaction for the same, the Commissioners of the United States in behalf of said States do hereby cede to said Nation a tract of country west of the Mississippi River, situate between the Arkansas and Red River, and bounded as follows: Beginning on the Arkansas River where the lower boundary line of the Cherokees strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River, three miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning.

ART. III. To prevent any dispute upon the subject of the boundaries mentioned in the 1st and 2d articles, it is hereby stipulated between the parties that the same shall be ascertained and distinctly marked by a Commissioner or Commissioners, to be appointed by the United States, accompanied by such person as the Choctaw Nation may select, said nation having thirty days' previous notice of the time and place at which the operation will commence. The person so chosen by the Choctaws shall act as a pilot or guide, for which the United States will pay him two dollars per day, whilst actually engaged in the performance of that duty.

ART. IV. The boundaries hereby established between the Choctaw Indians and the United States on this side

of the Mississippi River shall remain without alteration until the period at which said nation shall become so civilized and enlightened as to be made citizens of the United States, and Congress shall lay off a limited parcel of land for the benefit of each family or individual in the nation.

ART. V. For the purpose of aiding and assisting the poor Indians who wish to remove to the country hereby ceded on the part of the United States, and to enable them to do well and support their families, the Commissioners of the United States engage, in behalf of said States, to give to each warrior a blanket, kettle, rifle gun, bullet moulds and nippers, and ammunition sufficient for hunting and defense for one year. Said warrior shall also be supplied with corn to support him and his family for the same period, and whilst traveling to the country above ceded to the Choctaw Nation.

ART. VI. The Commissioners of the United States further covenant and agree, on the part of said States, that an agent shall be appointed, in due time, for the benefit of the Choctaw Indians who may be permanently settled in the country ceded to them beyond the Mississippi River, and, at a convenient period, a factor shall be sent there with goods to supply their wants. A blacksmith shall also be settled amongst them, at a point most convenient to the population, and a faithful person appointed whose duty it shall be to use every reasonable exertion to collect all the wandering Indians belonging to the Choctaw Nation upon the land hereby provided for their permanent settlement.

ART. VII. Out of the lands ceded by the Choctaw Nation to the United States, the Commissioners aforesaid, in behalf of said States, further covenant and agree that fifty-four sections of one mile square shall be laid out in good land by the President of the United States and sold for the purpose of raising a fund to be applied to the support of the Choctaw schools on both sides of the Mississippi River. Three-fourths of said fund shall be ap-

propriated for the benefit of the schools here, and the remaining fourth for the establishment of one or more beyond the Mississippi, the whole to be placed in the hands of the President of the United States, and to be applied by him expressly and exclusively to this valuable object.

ART. VIII. To remove any discontent which may have arisen in the Choctaw Nation, in consequence of six thousand dollars of their annuity having been appropriated annually, for sixteen years, by some of the chiefs, for the support of their schools, the Commissioners of the United States oblige themselves, on the part of said States, to set apart an additional tract of good land, for raising a fund equal to that given by the said chiefs, so that the whole of the annuity may remain in the nation, and be divided amongst them. And in order that exact justice may be done to the poor and distressed of said nation, it shall be the duty of the agent to see that the wants of every deaf, dumb, blind, and distressed Indian, shall be first supplied out of said annuity, and the balance equally distributed amongst every individual of said nation.

ART. IX. All those who have separate settlements, and fall within the limits of the land ceded by the Choctaw Nation to the United States, and who desire to remain where they now reside, shall be secured in a tract or parcel of land one mile square, to include their improvements. Any one who prefers reemoving, if he does so within one year from the date of this treaty, shall be paid their full value, to be ascertained by two persons, to be appointed by the President of the United States.

ART. X. As there are some who have valuable buildings on the roads and elsewhere upon the lands hereby ceded, should they remove, it is further agreed by the aforesaid commissioners, in behalf of the United States, that the inconvenience of doing so shall be considered, and such allowance made as will amount to an equivalent. For this purpose there shall be paid to the Mingo Puck-

shenubbee, five hundred dollars; to Harrison, two hundred dollars; to Captain Cobb, two hundred dollars; to William Hays, two hundred dollars; to O'Gleno, two hundred dollars, and to all others who have comfortable houses a compensation in the same proportion.

ART. XI. It is also provided by the Commissioners of the United States, and they agree in behalf of said States, that those Choctaw chiefs and warriors who have not received compensation for their services during the campaign to Pensacola, in the late war, shall be paid whatever is due them over and above the value of the blanket, shirt, flap, and leggins which have been delivered to them.

ART. XII. In order to promote industry and sobriety amongst all classes of the red people in this nation, but particularly the poor, it is further provided by the parties that the agent be appointed to reside here shall be, and he is hereby, vested with full power to seize and confiscate all the whiskey which may be introduced into said nation, except that used at public stands or brought in by the permit of the agent or the principal chiefs of the three districts.

ART. XIII. To enable the mongoes, chiefs, and headmen of the Choctaw Nation to raise and organize a corps of light-horse, consisting of ten in each district, so that good order may be maintained, and that all men, both white and red, may be compelled to pay their debts, it is stipulated and agreed that the sum of $200 shall be appropriated by the United States for each district annually, and placed in the hands of the agent to pay the expenses incurred in raising and establishing said corps, which is to act as executive officers in maintaining good order and compelling bad men to remove from the nation, who are not authorized to live in it by a regular permit from the agent.

ART. XIV. Whereas the father of the beloved Chief Mushulatubbee, of the Lower Towns, for and during his

life, did receive from the United States the sum of $150 annually, it is hereby stipulated that his son and successor, Mushulatubbee, shall annually be paid the same amount during his natural life, to commence from the ratification of this treaty.

ART. XV. The peace and harmony subsisting between the Choctaw Nation of Indians and the United States are hereby renewed, continued, and declared to be perpetual.

ART. XVI. These articles shall take effect and become obligatory upon the contracting parties so soon as the same shall be ratified by the President, by and with the advice and consent of the Senate of the United States.

(7 Stats. at Large, 210–213.)

ARTICLES OF A CONVENTION.

[Proclamation, February 19, 1825.]

TREATY OF 1825.

ART. I. The Choctaw Nation do hereby cede to the United States all that portion of the land ceded to them by the second article of the treaty of Doak Stand, as aforesaid, lying east of a line beginning on the Arkansas, one hundred paces east of Fort Smith, and running thence due south to Red River; it being understood that this line shall constitute and remain the permanent boundary between the United States and the Choctaws; and the United States agreeing to remove such citizens as may be settled on the west side, to the east side of said line, and prevent future settlements from being made on the west thereof.

ART. II. In consideration of the cession aforesaid, the United States do hereby agree to pay the said Choctaw Nation the sum of six thousand dollars annually forever; it being agreed that the said sum of six thousand dollars shall be annually applied, for the term of twenty years,

under the direction of the President of the United States, to the support of schools in said nation, and extending to it the benefits of instruction in the mechanic and ordinary arts of life, when, at the expiration of twenty years, it is agreed that the said annuity may be vested in stocks or otherwise disposed of, or continued, at the option of the Choctaw Nation.

ART. III. The eighth article of the treaty aforesaid having provided that an appropriation of lands shall be made for the purpose of raising six thousand dollars a year for sixteen years, for the use of the Choctaw Nation, and it being desirable to avoid the delay and expense attending the survey and sale of said land, the United States do hereby agree to pay the Choctaw Nation, in lieu thereof, the sum of six thousand dollars, annually, for sixteen years, to commence with the present year. And the United States further stipulate and agree to take immediate measures to survey and bring into market, and sell, the fifty-four sections of land set apart by the seventh article of the treaty aforesaid and apply the proceeds in the manner provided by the said article.

ART. IV. It is provided by the ninth section of the treaty aforesaid that all those of the Choctaw Nation who have separate settlements, and fall within the limits of the land ceded by said nation to the United States, and desire to remain where they now reside, shall be secured in a tract or parcel of land 1 mile square, to include their improvements. It is, therefore, hereby agreed that all who have reservations in conformity to said stipulation shall have power, with the consent of the President of the United States, to sell and convey the same in fee simple. It is further agreed on the part of the United States that those Choctaws, not exceeding four in number, who applied for reservations and received the recommendation of the commissioners, as per annexed copy of said recommendation, shall have the privilege, and the right is hereby given to them, to select, each of them, a por-

tion of land, not exceeding a mile square, anywhere within the limits of the cession of 1820, when the land is not occupied or disposed of by the United States, and the right to sell and convey the same, with the consent of the President, in fee simple, is hereby granted.

ART. V. There being a debt due by individuals of the Choctaw Nation to the late United States' trading house on the Tombigby, the United States hereby agree to relinquish the same; the delegation, on the part of their nation, agreeing to relinquish their claim upon the United States, to send a factor with goods to supply the wants of the Choctaw west of the Mississippi, as provided for by the sixth article of the treaty aforesaid.

ART. VI. The Choctaw Nation having a claim upon the United States, for services rendered in the Pensacola campaign, and for which it is stipulated, in the eleventh article of the treaty aforesaid, that payment shall be made, but which has been delayed for want of the proper vouchers, which it has been found, as yet, impossible to obtain; the United States, to obviate the inconvenience of further delay, and to render justice to the Choctaw warriors for their services in that campaign, do hereby agree upon an equitable settlement of the same, and fix the sum at fourteen thousand nine hundred and seventy-two dollars fifty cents; which, from the muster-rolls and other evidence in the possession of the Third Auditor, appears to be about the probable amount due for the services aforesaid, and which sum shall be immediately paid to the delegation, to be distributed by them to the chiefs and warriors of their nation, who served in the campaign aforesaid, as may appear to them to be just.

ART. VII. It is further agreed that the fourth article of the treaty aforesaid [the treaty of October 18th, 1820], shall be so modified as that the Congress of the United States shall not exercise the power of apportioning the lands for the benefit of each family or individual of the Choctaw Nation, and of bringing them under the laws of

the United States, but with the consent of the Choctaw Nation

ART. VIII. It appearing that the Choctaws have various claims against citizens of the United States for spoliations of various kinds, but which they have not been able to support by the testimony of white men, as they were led to believe was necessary, the United States, in order to a final settlement of all such claims, do hereby agree to pay to the Choctaw delegation the sum of two thousand dollars, to be distributed by them in such a way among the claimants as they may deem equitable. It being understood that this provision is not to affect such claims as may be properly authenticated, according to the provision of the act of 1802.

ART. IX. It is further agreed that immediately upon the ratification of this treaty, or as soon thereafter as may be, an agent shall be appointed for the Choctaws west of the Mississippi, and a blacksmith be settled among them, in conformity with the stipulation contained in the 6th article of the treaty of 1820.

ART. X. The Chief, Puck-she-nubbee, one of the members of the delegation, having died on his journey to see the President, and Robert Cole being recommended by the delegation as his successor, it is hereby agreed that the said Robert Cole shall reserve the medal which appertains to the office of chief, and, also, an annuity from the United States of one hundred and fifty dollars a year during his natural life, as was received by his predecessor.

ART. XI. The friendship heretofore existing between the United States and the Choctaw Nation is hereby renewed and perpetuated.

ART. XII. These articles shall take effect and become obligatory upon the contracting parties so soon as the same shall be ratified by the President, by and with the advice and consent of the Senate of the United States.

(7 Stats. at Large, 234, 236.)

ACT OF MAY 28TH, 1830.

AN ACT to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the river Mississippi.

[SEC. 1.] That it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States, west of the river Mississippi, not included in any State or organized Territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there. * * *

SEC. 2. *And be it further enacted*, That it shall and may be lawful for the President to exchange any or all of such districts, so to be laid off and described, with any tribe or nation of Indians now residing within the limits of any of the States or Territories, and with which the United States have existing treaties, for the whole or any part or portion of the territory claimed and occupied by such tribe or nation, within the bounds of any one or more of the States or Territories, where the land claimed and occupied by the Indians is owned by the United States, or the United States are bound to the State within which it lies to extinguish the Indian claim thereto.

SEC. 3. *And be it further enacted*, That in the making of any such exchange or exchanges it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guaranty to them, and their heirs or successors, the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided, always*, That such lands shall revert to the United States if the Indians become extinct or abandon the same.

SEC. 4. *And be it further enacted*, That if, upon any of the lands now occupied by the Indians, and to be exchanged for, there should be such improvements as add value to the land claimed by any individual or individuals of such tribes or nations, it shall and may be lawful for the President to cause such value to be ascertained by appraisement or otherwise, and to cause such ascertained value to be paid to the person or persons rightfully claiming such improvements. And upon the payment of such valuation, the improvements so valued and paid for shall pass to the United States, and possession shall not afterwards be permitted to any of the same tribe.

SEC. 5. *And be it further enacted*, That upon the making of any such exchange as is contemplated by this act, it shall and may be lawful for the President to cause such aid and assistance to be furnished to the emigrants as may be necessary and proper to enable them to remove to, and settle in, the country for which they may have exchanged; and also, to give them such aid and assistance as may be necessary for their support and subsistence for the first year after their removal.

* * * * *

(4 Stats. at Large, pp. 411, 412.)

TREATY OF 1830.

*Whereas the general assembly of the State of Mississippi has extended the laws of said State to persons and property within the chartered limits of the same, and the President of the United States has said that he cannot protect the Choctaw people from the operation of these laws: Now, therefore, that the Choctaws may live under their own laws, in peace with the United States and the State of Mississippi, they have determined to sell their lands east of the Mississippi, and have accordingly agreed to the following articles of treaty:**

* This paragraph was not ratified. (7 Stats., 333.)

ART. I. Perpetual peace and friendship is pledged and agreed upon by and between the United States and the mingoes, chiefs, and warriors of the Choctaw Nation of red people; and that this may be considered the treaty existing between the parties, all other treaties heretofore existing and inconsistent with the provisions of this are hereby declared null and void.

ART. II. The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River; running thence to the source of the Canadian Fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the treaty made and concluded at Washington City, in the year 1825. The grant to be executed so soon as the present treaty shall be ratified.

ART. III. In consideration of the provisions contained in the several articles of this treaty, the Choctaw Nation of Indians consent and hereby cede to the United States the entire country they own and possess east of the Mississippi River; and they agree to remove beyond the Mississippi River, early as practicable, and will so arrange their removal that as many as possible of their people, not exceeding one-half of the whole number, shall depart during the falls of 1831 and 1832, the residue to follow during the succeeding fall of 1833. A better opportunity in this manner will be afforded the Government to extend to them the facilities and comforts which it is desirable should be extended in conveying them to their new homes.

ART. IV. The Government and people of the United States are hereby obliged to secure to the said Choctaw Na-

tion of red people the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of red people and their descendants; and that no part of the land granted them shall ever be embraced in any Territory or State; but the United States shall forever secure said Choctaw Nation from and against all laws, except such as from time to time may be enacted in their own national councils, not inconsistent with the Constitution, treaties, and laws of the United States; and except such as may, and which have been, enacted by Congress, to the extent that Congress under the Constitution are required to exercise a legislation over Indian affairs. But the Choctaws, should this treaty be ratified, express a wish that Congress may grant to the Choctaws the right of punishing, by their own laws, any white man who shall come into their nation and infringe any of their national regulations.

ART. V. The United States are obliged to protect the Choctaws from domestic strife, and from foreign enemies, on the same principles that the citizens of the United States are protected; so that whatever would be a legal demand upon the United States for defence, or for wrongs committed by an enemy on a citizen of the United States, shall be equally binding in favor of the Choctaws; and in all cases where the Choctaws shall be called upon by a legally authorized officer of the United States to fight an enemy such Choctaw shall receive the pay and other emoluments which citizens of the United States receive in such cases; provided, no war shall be undertaken or prosecuted by said Choctaw Nation but by declaration made in full council, and to be approved by the United States, unless it be in self-defence, against an open rebellion, or aginst an enemy marching into their country; in which cases they shall defend until the United States are advised thereof.

ART. VI. Should a Choctaw or any party of Choctaws commit acts of violence upon the person or property of a citizen of the United States, or join any war party against any neighboring tribe of Indians, without the authority in the preceding article, and except to oppose an actual or threatened invasion or rebellion, such person so offending shall be delivered up to an officer of the United States, if in the power of the Choctaw Nation, that such offender may be punished, as may be provided in such cases, by the laws of the United States; but if such offender is not within the control of the Choctaw Nation, then said Choctaw Nation shall not be held responsible for the injury done by said offender.

ART. VII. All acts of violence committed upon persons and property of the people of the Choctaw Nation, either by citizens of the United States or neighboring tribes of red people, shall be referred to some authorized agent, by him to be referred to the President of the United States, who shall examine into such cases, and see that every possible degree of justice is done to said Indian party of the Choctaw Nation.

ART. VIII. Offenders against the laws of the United States, or any individual State, shall be apprehended and delivered to any duly authorized person, where such offender may be found in the Choctaw country, having fled from any part of the United States; but in all such cases application must be made to the agent or chiefs, and the expense of his apprehension and delivery provided for and paid by the United States.

ART. IX. Any citizen of the United States who may be ordered from the nation by the agent and constituted authorities of the nation, and refusing to obey, or return into the nation without the consent of the aforesaid persons, shall be subject to such pains and penalties as may be provided by the laws of the United States in such cases. Citizens of the United States, traveling peaceably

under the authority of the laws of the United States, shall be under the care and protection of the nation.

ART. X. No person shall expose goods or other articles for sale as a trader, without a written permit from the constituted authorities of the nation, or authority of the laws of the Congress of the United States, under penalty of forfeiting the articles; and the constituted authorities of the nation shall grant no license except to such persons as reside in the nation, and are answerable to the laws of the nation. The United States shall be particularly obliged to assist to prevent ardent spirits from being introduced into the nation.

ART. XI. Navigable streams shall be free to the Choctaws, who shall pay no higher toll or duty than citizens of the United States. It is agreed further that the United States shall establish one or more post-offices in said nation, and may establish such military post-roads, and posts, as they may consider necessary.

ART. XII. All intruders shall be removed from the Choctaw Nation, and kept without it. Private property to be always respected, and on no occasion taken for public purposes, without just compensation being made therefor to the rightful owner. If an Indian unlawfully take or steal any property from a white man, a citizen of the United States, the offender shall be punished. And if a white man unlawfully take or steal anything from an Indian, the property shall be restored, and the offender punished. It is further agreed that when a Choctaw shall be given up to be tried for any offense against the laws of the United States, if unable to employ counsel to defend him, the United States will do it, that his trial may be fair and impartial.

ART. XIII. It is consented that a qualified agent shall be appointed for the Choctaws every four years, unless sooner removed by the President; and he shall be removed on petition of the constituted authorities of the

nation, the President being satisfied there is sufficient cause shown. The agent shall fix his residence convenient to the great body of the people; and in the selection of an agent immediately after the ratification of this treaty, the wishes of the Choctaw Nation on the subject shall be entitled to great respect.

ART. XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States, shall be permitted to do so, by signifying his intention to the agent within six months from the ratification of this treaty; and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age, and a quarter-section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands, intending to become citizens of the States, for five years after the ratification of this treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove, are not to be entitled to any portion of the Choctaw annuity.

ART. XV. To each of the chiefs in the Choctow Nation, to wit, Greenwood Leflore, Nutackachie, and Musholatubbe, there is granted a reservation of four sections of land, two of which shall include and adjoin their present improvement, and the other two located where they please, but on unoccupied unimproved lands; such sections shall be bounded by sectional lines, and with the consent of the President they may sell the same. Also, to the three principal chiefs, and to their successors in office, there shall be paid two hundred and fifty dollars annually, while they shall continue in their respective offices, except to Mushulatubbe, who, as he has an annuity of one hundred and

fifty dollars for life under a former treaty, shall receive only the additional sum of one hundred dollars while he shall continue in office as chief; and if in addition to this the nation shall think proper to elect an additional principal chief of the whole to superintend and govern upon republican principles he shall receive annually for his services five hundred dollars, which allowance to the chiefs and their successors in office shall continue for twenty years. At any time when in military service, and while in service by authority of the United States, the district chiefs under and by selection of the President shall be entitled to the pay of majors; the other chief under the same circumstances shall have the pay of a lieutenant-colonel. The speakers of the three districts shall receive twenty-five dollars a year for four years each; and the three secretaries, one to each of the chiefs, fifty dollars each for four years. Each captain of the nation, the number not to exceed ninety-nine, thirty-three from each district, shall be furnished upon removing to the West with each a good suit of clothes and a broadsword, as an outfit, and for four years, commencing with the first of their removal, shall each receive fifty dollars a year for the trouble of keeping their people at order in settling; and whenever they shall be in military service by authority of the United States shall receive the pay of a captain.

ART. XVI. In wagons, and with steamboats, as may be found necessary, the United States agree to remove the Indians to their new homes at their expense, and under the care of discreet and careful persons, who will be kind and brotherly to them. They agree to furnish them with ample corn and beef, or pork, for themselves and families, for twelve months after reaching their new homes. It is agreed, further, that the United States will take all their cattle, at the valuation of some discreet person to be appointed by the President, and the same shall be paid for in money after their arrival at their new homes; or other cattle, such as may be desired, shall be furnished them,

notice being given through their agent of their wishes upon this subject, before their removal, that time to supply the demand may be afforded.

ART. XVII. The several annuities and sums secured under former treaties to the Choctaw Nation and people, shall continue as though this treaty had never been made. And it is further agreed that the United States, in addition, will pay the sum of twenty thousand dollars for twenty years, commencing after their removal to the West, of which, in the first year after their removal, ten thousand dollars shall be divided and arranged to such as may not receive reservations under this treaty.

ART. XVIII. The United States shall cause the lands hereby ceded to be surveyed, and surveyors may enter the Choctaw country for that purpose, conducting themselves properly, and disturbing or interrupting none of the Choctaw people. But no person is to be permitted to settle within the nation, or the lands to be sold, before the Choctaws shall remove. And for the payment of the several amounts secured in this treaty, the lands hereby ceded are to remain a fund pledged to that purpose, until the debt shall be provided for and arranged. And further, it is agreed, that in the construction of this treaty, wherever well-founded doubt shall arise, it shall be constructed most favorably towards the Choctaws.

ART. XIX. The following reservations of land are hereby admitted: To Colonel David Folsom four sections, of which two shall include his present improvement, and two may be located elsewhere, on unoccupied unimproved land.

To I. Garland, Colonel Robert Cole, Tuppanahomer, John Pytchlynn, Chas. Juzan, Johokebetubbe, Eaychahobia, Ofehoma, two sections each, to include their improvements, and to be bounded by sectional lines; and the same may be disposed of and sold, with the consent of the President. And that others not provided for may be provided for, there shall be reserved as follows:

First. One section to each head of a family, not exceeding forty in number, who, during the present year, may have had in actual cultivation, with a dwelling-house thereon, fifty acres or more.

Second. Three quarter sections, after the manner aforesaid, to each head of a family, not exceeding four hundred and sixty, as shall have cultivated thirty acres and less than fifty, to be bounded by quarter-section lines of survey, and to be contiguous and adjoining.

Third. One half section as aforesaid to those who shall have cultivated from twenty to thirty acres, the number not to exceed four hundred.

Fourth. A quarter section as aforesaid to such as shall have cultivated from twelve to twenty acres, the number not to exceed three hundred and fifty, and one-half that quantity to such as shall have cultivated from two to twelve acres, the number also not to exceed three hundred and fifty persons. Each of said class of cases shall be subject to the limitations contained in the first class, and shall be so located as to include that part of the improvement which contains the dwelling-house. If a greater number shall be found to be entitled to reservations under the several classes of this article than is stipulated for under the limitation prescribed, then and in that case the chiefs, separately or together, shall determine the persons who shall be excluded in the respective districts.

Fifth. Any captain, the number not exceeding ninety persons, who, under the provisions of this article, shall receive less than a section, he shall be entitled to an additional quantity of half a section, adjoining to his other reservation. The several reservations secured under this article may be sold with the consent of the President of the United States; but should any prefer it or omit to take a reservation for the quantity he may be entitled to, the United States will, on his removing, pay fifty cents an acre after reaching their new homes, provided that before the first of January next they shall adduce to the

agent or some other authorized person, to be appointed, proof of his claim, and the quantity of it.

Sixth. Likewise children of the Choctaw Nation residing in the nation, who have neither father nor mother, a list of which, with satisfactory proof of parentage and orphanage being filed with the agent in six months, to be forwarded to the War Department, shall be entitled to a quarter section of land, to be located under the direction of the President, and with his consent the same may be sold and the proceeds applied to some beneficial purpose for the benefit of said orphans.

ART. XX. The United States agree and stipulate as follows: That for the benefit and advantage of the Choctaw people, and to improve their condition, there shall be educated under the direction of the President, and at the expense of the United States, forty Choctaw youths for twenty years. This number shall be kept at school, and, as they finish their education, others, to supply their places, shall be received for the period stated. The United States agree also to erect a council-house for the nation, at some convenient central point, after their people shall be settled, and a house for each chief; also a church for each of the three districts, to be used also as school-houses, until the nation may conclude to build others; and for these purposes ten thousand dollars shall be appropriated; also fifty thousand dollars, viz, twenty-five hundred dollars annually shall be given for the support of three teachers of schools for twenty years. Likewise there shall be furnished to the nation three blacksmiths, one for each district, for sixteen years, and a qualified millwright for five years. Also there shall be furnished the following articles: Twenty-one hundred blankets; to each warrior who emigrates a rifle, molds, wipers, and ammunition; one thousand axes, plows, hoes, wheels, and cards each; and four hundred looms. There shall also be furnished one ton of iron, and two hundred

weight of steel annually, to each district, for sixteen years.

ART. XXI. A few Choctaw warriors yet survive who marched and fought in the army with Gen. Wayne, the whole number stated not to exceed twenty. These it is agreed shall hereafter, while they live, receive twenty-five dollars a year; a list of them to be early as practicable, and within six months, made out and presented to the agent, to be forwarded to the War Department.

ART. XXII. The chiefs of the Choctaws have suggested that their people are in a state of rapid advancement in education and refinement, and have expressed a solicitude that they might have the privilege of a Delegate on the floor of the House of Representatives extended to them. The Commissioners do not feel that they can, under a treaty stipulation, accede to the request, but at their desire present it in the treaty, that Congress may consider of and decide the application.

Done and signed and executed by the Commissioners of the United States, and the chiefs, captains, and headmen of the Choctaw Nation, at Dancing Rabbit Creek, this twenty-seventh day of September, eighteen hundred and thirty.

JOHN H. EATON. [SEAL.]
JOHN COFFEE. [SEAL.]

Supplementary articles to the preceding treaty.

Various Choctaw persons have been presented by the chiefs of the nation, with a desire that they might be provided for; being particularly deserving, an earnestness has been manifested that provision might be made for them. It is, therefore, by the undersigned Commissioners here assented to, with the understanding that they are to have no interest in the reservations which are directed and

provided for under the general treaty to which this is a supplement.

As evidence of the liberal and kind feelings of the President and Government of the United States, the Commissioners agree to the request as follows, to wit: Pierre Juzan, Peter Pitchlynn, G. W. Harkins, Jack Pitchlynn, Israel Folsom, Louis Leflore, Benjamin James, Joel H. Nail, Hopoynjahubbee, Onorkubee, Benjamin Leflore, Michael Leflore, and Allen Yates and wife, shall be entitled to a reservation of two sections of land each, to include their improvement where they at present reside, with the exception of the three first-named persons and Benjamin Leflore, who are authorized to locate one of their sections on any other unimproved and unoccupied land within their respective districts.

ART. II. And to each of the following persons there is allowed a reservation of a section and a half of land (to wit), James L. McDonald, Robert Jones, Noah Wall, James Campbell, G. Nelson, Vaughn Brashears, R. Harris, Little Leader, S. Fostor, J. Vaughn, L. Durans, Samuel Long, T. Magagha, Thos. Everge, Giles Thompson, Thomas Garland, John Bond, William Leflore, and Turner Brashears. The two first-named persons may locate one section each and one section jointly on any unimproved and unoccupied land, these not residing in the nation. The others are to include their present residence and improvement.

Also one section is allowed to the following persons (to wit), Middleton Mackey, Wesley Train, Choclehomo, Moses Foster, D. W. Wall, Charles Scott, Molly Nail, Susan Colbert, who was formerly Susan James, Samuel Garland, Silas Fisher, D. McCurtain, Oaklahoma, and Polly Fillecuthey, to be located in entire sections, to include their present residence and improvement, with the exception of Molly Nail and Susan Colbert, who are authorized to locate theirs on any unimproved unoccupied land.

John Pitchlynn has long and faithfully served the nation in character of United States interpreter; he has acted as such for forty years; in consideration it is agreed, in addition to what has been done for him, there shall be granted to two of his children, to wit: Silas Pitchlynn and Thomas Pitchlynn, one section of land each, to adjoin the location of their father; likewise to James Madison and Peter, sons of Musholatubbee, one section of land each, to include the old house and improvement where their father formerly lived, on the old military road adjoining a large prairie.

And to Henry Groves, son of the chief Natticache, there is one section of land given to adjoin his father's land.

And to each of the following persons half a section of land is granted on any unoccupied and unimproved lands in the districts where they respectively live, to wit: William Harkins, James D. Hamilton, William Juzan, Tobias Leflore, Joa. Doke, Jacob Folsom, P. Hays, Samuel Worcester, George Hunter, William Train, Robert Nail, and Alexander McKee.

And there is given a quarter section of land each to Delila and her five fatherless children, she being a Choctaw woman residing out of the nation; also, the same quantity to Peggy Trihan, another Indian woman residing out of the nation, and her two fatherless children; and to the widows of Pushmilaha and Pucktshenubbee, who were formerly distinguished chiefs of the nation, and for their children, four quarter sections of land each, in trust for themselves and their children.

All of said last-mentioned reservations are to be located under and by direction of the President of the United States.

ART. III. The Choctaw people, now that they have ceded their lands, are solicitous to get to their new homes early as possible, and accordingly they wish that a party may be permitted to proceed this fall to ascertain whereabouts will be most advantageous for their people to be

located. It is therefore agreed that three or four persons (from each of the three districts), under the guidance of some discreet and well qualified person or persons, may proceed during this fall to the west upon an examination of the country. For their time and expenses the United States agree to allow the said twelve persons two dollars a day each, not to exceed one hundred days, which is deemed to be ample time to make an examination. If necessary, pilots acquainted with the country will be furnished when they arrive in the west.

ART. IV. John Donly, of Alabama, who has several Choctaw grandchildren, and who for twenty years has carried the mail through the Choctaw Nation, a desire by the chiefs is expressed that he may have a section of land; it is accordingly granted; to be located in one entire section, on any unimproved and unoccupied land. Allen Glover and George S. Gaines, licensed traders in the Choctaw Nation, have accounts amounting to upwards of nine thousand dollars against the Indians, who are unable to pay their said debts without distressing their families; a desire is expressed by the chiefs that two sections of land be set apart to be sold, and the proceeds thereof to be applied toward the payment of the aforesaid debt. It is agreed that two sections of any unimproved and unoccupied land be granted to George S. Gaines, who will sell the same for the best price he can obtain, and apply the proceeds thereof to the credit of the Indians, on their accounts due to the above-mentioned Glover and Gaines, and shall make the application to the poorest Indian first. At the earnest and particular request of the chief, Greenwood Leflore, there is granted to David Haley, one half section of land, to be located in a half section on any unoccupied and unimproved land, as a compensation for a journey to Washington City, with despatches to the Government, and returning others to the Choctaw Nation.

The foregoing is entered into as supplemental to the treaty concluded yesterday.

Done at Dancing Rabbit Creek the 28th day of September, 1830.

JNO. H. EATON. [L. S.]
JNO. COFFEE. [L. S.]

Now, therefore, be it known that I, Andrew Jackson, President of the United States of America, having seen and considered said treaty, do, in pursuance of the advice and consent of the Senate, as expressed by their resolution of the twenty-first day of February, one thousand eight hundred and thirty-one, accept, ratify, and confirm the same, and every clause and article thereof, with the exception of the preamble.

In testimony whereof I have caused the seal of the United States to be hereunto affixed, having signed the same with my hand.

Done at the city of Washington this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and thirty-one, and of the Indpendence of the United States the fifty-fifth.

[L. S.] ANDREW JACKSON.

By the President.

M. VAN BUREN,
Secretary of State.

(7 Stats. at Large, 333–342.)

JOINT RESOLUTION OF MAY 9, 1836,

Provides: That so much of the public lands, acquired by the treaty concluded with the Choctaw Nation of Indians, at Dancing Rabbit Creek, on the twenty-eighth day of September, eighteen hundred and thirty, as has been conditionally, or otherwise located by the locating agent of the United States to persons claiming reservations under the fourteenth article of said treaty, be withheld from pub-

lic sale until the first day of December next: *Provided*, That nothing herein contained, shall be taken or construed as indicating any intention on the part of Congress to confirm said claims. (5 Stats. at Large, pp. 131, 132.)

ACT OF MARCH 3, 1837.

AN ACT for the appointment of Commissioners to adjust the claims to reservations of land under the fourteenth article of the treaty of eighteen hundred and thirty with the Choctaw Indians.

Be it enacted, &c., That there shall be appointed by the President, by and with the advice and consent of the Senate, three Commissioners, whose duty it shall be to meet in the State of Mississippi at such time and place as the President shall appoint and designate, and there proceed to ascertain the name of every Choctaw Indian who was the head of an Indian family at the date of the treaty at Dancing Rabbit Creek, who has not already obtained a reservation under said treaty, and who can show by satisfactory evidence, that he or she complied with or offered to comply with all the requisites of the fourteenth article of said treaty, to entitle him or her to a reservation under said article; and also the number and names of all the unmarried children of such heads of families, who formed a part of the family, and were over ten years of age, and likewise the number and names of the children of such heads of families as were under ten years of age, and report to the President, to be, by him, laid before Congress, all the names of such Indians, and the different sections of land to which such heads of families were respectively entitled, together with the opinions of the Commissioners, and whether any part of said lands have been sold by the Government, and the proofs applicable to each case.

SEC. 2. [Commissioners to take oath of office] (181).

SEC. 3. [Authority to appoint a secretary, whose duties are prescribed.]

SEC 4. *And be it further enacted*, That upon the request of the Commissioners it shall be the duty of the district attorney of the State of Mississippi to attend said board, and give his assistance in procuring the attendance of witnesses, and his aid and advice in their examination, the better to enable the Commissioners to ascertain the facts correctly in each case.

SEC. 5. [Salaries to be paid Commissioners and secretary.]

SEC. 6. *And be it further enacted*, That said Commissioners shall have full power to summon and cause to come before them such witnesses as they may deem necessary, and to have them examined on oath, and if any witness shall testify falsely, with an intention to mislead said Commissioners, such witness shall be guilty of willful and corrupt perjury, and shall, upon conviction before any jurisdiction having cognizance thereof, suffer the punishment by law inflicted on those guilty of that offense.

SEC. 7. *And be it further enacted*, That nothing contained in this act shall be so construed as to sanction what is called contingent locations which have been made by George M. Martin for the benefit of such Indians as were supposed to have been entitled to other lands, which have been sold by the United States; such contingent locations having been made without any legal authority. It being the true intent of this act to reserve to Congress the power of doing that which may appear just when a correct knowledge of all the facts is obtained.

SEC. 8. *And be it further enacted*, That this act shall be in force to the first day of March, eighteen hundred and thirty-eight next, and no longer. Approved March 3d, 1837. (5 Stats. at Large, pp. 180,181.)

ACT OF FEBRUARY 22, 1838.

AN ACT to amend an act entitled "An act for the appointment of Commissioners to adjust the claims to reservations of land under the fourteenth article of the treaty of eighteen hundred and thirty with the Choctaw Indians."

SEC. 1. [Gives power to adjourn sessions.]

SEC. 2. [Authorizes two Commissioners to act in case of death or absence of the third.]

SEC. 3. *And be it further enacted,* That the said Commissioners shall have all the powers of a court of record, for the purpose of compelling the attendance of witnesses, administering oaths, touching matters depending before them, preserving order, and punishing contempts; and shall have power to make all needful rules for the regulation of the proceedings before them, as well as to employ one or more interpreters, and one or more agents to collect testimony for the United States.

SEC. 4. [Appropriates $5,000 for expenses.]

SEC. 5. [Act to remain in force until first of August.]

SEC. 6. [Compensation of district attorney.]

SEC. 7. *And be it further enacted,* That nothing contained in this act, or the act which this is intended to amend, shall be so construed as to embrace the claim of any Indian or head of a Choctaw family who has removed west of the Mississippi River.

SEC. 8. *And be it further enacted,* That if it shall be proved to the satisfaction of said Commissioners that any claimant has attempted, or shall attempt to substitute the child of any other Indian as and for his own, or has attempted or shall attempt, by his testimony, to substitute for the child of any other claimant the child of another Indian, the name of such claimant so attempting to make such substitution shall be stricken from the list of claimants. Approved February 22, 1838. (5 Stat. at Large, p. 211.)

ACT OF JUNE 22, 1838.

[" AN ACT to grant pre-emption rights to settlers on the public lands" closes with this proviso:]

And provided further, That it shall be the duty of the President of the United States to cause to be reserved from sale or entry, under the provisions of this or any other law of the United States, any tract or tracts of land reserved to any Choctaw, under the provisions of the treaty of Dancing Rabbit Creek, of one thousand eight hundred and thirty, and also to reserve from sale or entry a sufficient quantity of the lands acquired by said treaty, upon which no such settlement or improvement has been made as would entitle the settler or improver to a right of pre-emption under this act, to satisfy the claims of such Indians as may have been entitled to reservations under the said treaty, and whose lands may have been sold by the United States on account of any default, neglect, or omission of duty on the part of any officer of the United States; such reservation from sale to continue until the claims to reservations under said treaty shall be investigated by the Board of Commissioners appointed for that purpose, and their report finally acted on by Congress. Approved June 22, 1838. (5 Stat. at Large, 252.)

ACT OF JUNE 1, 1840.

[Supplemental to foregoing act of June 22, 1838, closes with these words:]

"And nothing in the last proviso of the act of the 22d of June, 1838, shall be so construed as to defeat any right of pre-emption accruing under said act, or under this act, or under any preceding act of Congress, nor shall said pre-emption claims be defeated by any contingent Choctaw location." (5 Stats. at Large, 382.)

ACT OF SEPTEMBER 4, 1841.

[After granting in section 10 certain pre-emption rights, provides that:]

So much of the proviso of the act of 22d June, 1838, or any order of the President of the United States as directs certain reservations to be made in favor of certain claims under the treaty of Dancing Rabbit Creek, be, and the same is hereby, repealed: *Provided*, That such repeal shall not affect any title to any tract of land secured in virtue of said treaty. (5 Stats. at Large, 456.)

ACT OF AUGUST 23, 1842.

AN ACT to provide for the satisfaction of claims arising under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit Creek, concluded in September, one thousand eight hundred and thirty.

Be it enacted, &c., That the act approved on the third of March, eighteen hundred and thirty-seven, entitled "An act for the appointment of Commissioners to adjust the claims to reservations of land under the fourteenth article of the treaty of eighteen hundred and thirty with the Choctaw Indians," and also the act approved on the twenty-second day of February, eighteen hundred and thirty-eight, entitled "An act to amend an act entitled 'an act for the appointment of Commissioners to adjust the claims to reservations of land under the fourteenth article of the treaty of eighteen hundred and thirty with the Choctaw Indians,' so far as the same are not repealed or modified by the provisions of this act," be, and the same are hereby [514], revived and continued in force until the powers conferred by this act shall be fully executed, subject, nevertheless, to repeal or modification by any act of Congress. And all the powers and duties of the Commissioners are hereby extended to claims arising under the

nineteenth article of the said treaty, and under the supplement to the said treaty, to be examined in the same manner and with the same effect as in cases arising under the fourteenth article of the said treaty: *Provided*, That the salary of said Commissioners shall not exceed the rate of two thousand five hundred dollars per annum.

SEC. 2. *And be it further enacted*, That subpœnas for the attendance of witnesses before the said Commissioners, and process to compel such attendance may be issued by the said Commissioners, or any two of them, under their seals in the same manner and with the same effect as if issued by courts of record, and may be executed by the marshal of any district, or by any sheriff, deputy sheriff, or other peace officer designated by the said Commissioners, who shall receive for such services the same fees as are allowed in the district court of the United States for the district in which the same shall be rendered for similar services, to be paid, on the certificate of the Commissioners, out of the contingent fund appropriated by the fourth section of the act secondly above recited, which was approved on the twenty-second day of February, one thousand eight hundred and thirty-eight, and which is revived by this act: *Provided*, That nothing herein contained shall be construed to revive such portion of the act approved the third day of March, one thousand eight hundred and thirty-seven, referred to in the first section of this act, as provides for the employment and pay of the district attorney of either of the districts of the State of Mississippi.

SEC. 3. *And be it further enacted*, That when the said Commissioners shall have ascertained that any Choctaw has complied or offered to comply with all the requisites of the fourteenth article of the said treaty, to entitle him to any reservation under that article, which requisites are as follows, to wit: that said Choctaw Indian did signify his or her intention to the agent in person, or by some person duly authorized and especially directed by said In-

dian, to signify the intention of said Indian to become a citizen of the State within six months from the date of the ratification of the said treaty, and had his or her name, within the time of six months aforesaid, enrolled on the register of the Indian agent aforesaid, for that purpose; or shall prove to the entire satisfaction of the said Commissioners and to the Secretary of War that he or she did signify his or her intention within the term of six months from the date of the ratification of the treaty aforesaid, if his or her name was not enrolled in the register of the agent aforesaid but was omitted by said agent; and, secondly, that said Indian did, at the date of making said treaty, to wit, on the twenty-seventh day of September, eighteen hundred and thirty, have and own an improvement in the then Choctaw country; and that, having and owning an improvement, at the place and time aforesaid, did reside upon that identical improvement, or a part of it, for the term of five years continuously, next after the ratification of said treaty, to wit, from the twenty-fourth of February, eighteen hundred and thirty-one, to the 24th of February, eighteen hundred and thirty-six, unless it shall be made to appear that such improvement was, before the twenty-fourth day of February, eighteen hundred and thirty-six, disposed of by the United States, and that the reservee was dispossessed by means of such disposition; and, thirdly, that it shall be made to appear, to the entire satisfaction of said Commissioners, and to the Secretary of War, that said Indian did not receive any other grant of land under the provisions of any other article of said treaty; and, fourthly, that it shall be made to appear, in like manner, that said Indian did not remove to the Choctaw country west of the Mississippi [515] River, but he or she had continued to reside within the limits of the country ceded by the Choctaw Indians to the United States, by said treaty of twenty-seventh September, in the year eighteen hundred and thirty. it shall be the duty of said Commissioners, if all and each of the above

requisites shall be made clearly to appear to their satisfaction, and the Secretary of War shall concur therein, to proceed to ascertain the quantity of land to which said Indian, by virtue of the fourteenth article of said treaty, is entitled to, which, when ascertained, shall be located for said Indian, according to sectional lines, so as to embrace the improvement, or a part of it, owned by said Indian at the date of said treaty; and it shall be the duty of the President of the United States to issue a patent to said Indian for said land, if he or she be living, and if not, to his or her heirs and legal representatives; and in like manner shall the Commissioners aforesaid ascertain the quantity of land granted by said article to each child of said Indian, according to the limitations contained in said article, and locate said quantity for said children, contiguous to and adjoining the improvement of the parent of such child or children; and the President shall issue a patent for each tract of land thus located, to said Indian child, if living, and if not, to the heirs and legal representatives of such Indian child. But if the United States shall have disposed of any tract of land, to which any Indian was entitled, under the provisions of said fourteenth article of said treaty, so that it is now impossible to give said Indian the quantity to which he was entitled, including his improvements, as aforesaid, or any part of it, or to his children, on the adjoining lands, the said Commissioners shall thereupon estimate the quantity to which each Indian is entitled, and allow him or her, for the same, a quantity of land equal to that allowed, to be taken out of any of the public lands in the States of Mississippi, Louisiana, Alabama, and Arkansas, subject to entry at private sale; and certificates to that effect shall be delivered under the direction of the Secretary of War, through such agent as he may select, not more than one-half of which shall be delivered to said Indian until after his removal to the Choctaw Territory west of the Mississippi River. The said Commissioners shall also ascertain the Choctaws, if

any, who relinquished or offered to relinquish any reservations to which he was entitled under the nineteenth article of the said treaty, or whose reservations under that article had been sold by the United States; and shall also determine the quantity to which such claimant was entitled and the quantity of land which should be allowed him on extinguishment of such claim, at the rate of two-fifths of an acre for every acre of the land to which said claimant was entitled, said land having been estimated under this article at fifty cents per acre: *Provided, nevertheless*, That no claim shall be considered or allowed by said Commissioners, for or in the name or behalf of any Indian claimant whose name does not appear upon the lists or registers of claimants made by Major Armstrong, special agent for that purpose, in conjunction with the three chiefs of the three Choctaw districts, and returned to the Department of War in January, eighteen hundred and thirty-two, and who does not appear from those registers to be entitled to a reservation under said nineteenth article.

SEC. 4. *And be it further enacted*, That the said Commissioners, within two years from the time of their entering upon the duties of their offices, and as often as shall be required by the President of the United States, shall report to him their proceedings in the premises, with a full and perfect list of names of all the Choctaws whom they shall have determined to be entitled to reservations under this act, the quantity of land to which each shall be so entitled, the number of claims which can be located according to the provisions of the fourth [third] section of this act, and such as cannot be located according to the provisions of the fourth [third] [516] section of this act. And the powers and duties of the said Commissioners shall cease at the expiration of two years from the time of the first organization of the board, and their proceedings may be terminated by the President at any time previous to the expiration of the said two years.

SEC. 5. *And be it further enacted*, That the Commissioners to be appointed under this act shall also ascertain and determine the quantity of land to which any Choctaw or other person named in the supplement to the said treaty of Dancing Rabbit Creek was entitled by virtue thereof, and which such person has by any means been prevented from receiving.

SEC. 6. *And be it further enacted*, That if the President of the United States shall approve and confirm the determination of the Commissioners heretofore appointed to investigate the claims existing under the fourteenth article of the said treaty of Dancing Rabbit Creek, in any case, he shall cause to be delivered to the claimant, if he be a Choctaw Indian, his legal representatives or heirs, certificates, as provided by the fourth [*third*] section of this act, for the quantity of land to which such claimant shall appear, by such determination, to have been entitled, in full satisfaction and discharge of such claim: *Provided*, Such determination was made by adhering, in every instance, to the requisites contained in the fourth [*third*] section of this act: *And provided, also*, That said claims, nor either of them, cannot now be located, according to the provisions of the fourth [*third*] section of this act.

SEC. 7. *And be it further enacted*, That distinct accounts shall be kept of the certificates issued in satisfaction of the claims provided for by this act, and of all expenses attending the execution of the same; and the amount thereof shall be retained and withheld from any distribution to the States.

SEC. 8. *And be it further enacted*, That nothing in this act contained shall be so construed as to authorize the said Commissioners to adjudicate any claim which may be presented by a white man who may have had, or now has, an Indian wife or family; and any patent to land, which shall issue on any Indian claim under the provisions of the treaty aforesaid, shall be issued to the Indian to whom the claim was allowed, if living, and if dead, to his or her

heirs and legal representatives, any act of Congress, or usage, or custom, to the contrary notwithstanding.

SEC. 9. *And be it further enacted*, That no claim shall be allowed, under the fourteenth article of said treaty, if the said Commissioners shall be satisfied, by such proof as they may prescribe, that said claim had been, previous to the expiration of five years from the ratification of said treaty, assigned either in whole or in part; and in case of a partial assignment, or agreement for an assignment thereof, the same shall be allowed so far only as the original Indian claimant was at that date the bona fide proprietor thereof.

SEC. 10. *And be it further enacted*, That all claims under either of the articles of said treaty mentioned above, or the supplemental articles thereof, which shall not be duly presented to said Commissioners for allowance within one year after the final passage of this act, shall be thereafter forever barred. Approved August 23d, 1842. (5 Stats. at Large, pp. 513, 514, 515, 516.)

ACT OF MARCH 3, 1845.

Indian appropriation act.

That of scrip which has been awarded, or which shall be awarded to Choctaw Indians under the provisions of the law of 23d August, 1842, that portion thereof not deliverable East, by the third section of said law, in these words, "not more than one-half of which shall be delivered to said Indian until after his removal to the Choctaw territory, west of the Mississippi," shall not be issued or delivered in the West, but the amounts awarded for land on which they resided, but which it is impossible for the United States now to give them, shall carry an interest of five per cent., which the United States will pay annually to the reservees under the treaty of 1830, re-

spectively, or to their heirs and legal representatives, forever, estimating the land to which they may be entitled at one dollar and twenty-five cents per acre: *Provided further*, That so much of the law of twenty-third August, one thousand eight hundred and forty-two, as is inconsistent herewith, is hereby repealed. (5 Stats. at Large, p. 777.)

ACT OF JUNE 27, 1846.

Indian appropriation act.

For interest on the amounts awarded Choctaw claimants, under the fourteenth article of the treaty of Dancing Rabbit Creek, of September 27, 1830, for lands on which they resided, but which it is now impossible to give them, and in lieu of the scrip that has been awarded under the act of August 23, 1842, not deliverable east by the third section of the said law, per act of third of March, 1854, viz, three thousand seven hundred and twenty-five dollars for the year eighteen hundred and forty-five, and thirty-five thousand five hundred and seventy-five dollars for the year eighteen hundred and forty-six. (9 Stats. at Large, p. 34.)

JOINT RESOLUTION OF AUGUST 3, 1846.

Joint resolution to authorize the Secretary of War to adjudicate the claims of the Su-quah-natch-ah, and other clans of Choctaw Indians, whose cases were left undetermined by the Commissioners for the want of the township maps.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War, for the purpose of consummating the claims of the Su-quah-natch-ah and other clans of Choctaw Indians, in whose cases the testimony was taken

by the Commissioners appointed by virtue of the act approved the twenty-third of August, eighteen hundred and forty-two, and returned to the War Department, but judgment was not entered up for the want of the maps, whereby the location of the lands of the claimants and the allotment of land or scrip, respectively, to each, could alone be determined, be, and he is hereby, authorized to decide the same, and award land or scrip in each case, as the testimony already taken may justify.

Approved August 3, 1846.

(9 Stats. at Large, 114.)

ACT OF MARCH 1, 1847.

Indian appropriation act.

For interest on the amounts awarded Choctaw claimants, under the fourteenth article of the treaty of Dancing Rabbit Creek, of the twenty-seventh September, 1830, for lands on which they resided, but which it is now impossible to give them, and in lieu of the scrip that has been awarded under the act of twenty-third August, 1842, not deliverable east by the third section of the said law, per act of third of March, 1845, for the year eighteen hundred and forty-seven, forty-three thousand six hundred dollars. (9 Stats. at Large, 145.)

ACT OF SEPTEMBER 30, 1850.

Indian appropriation act.

For interest on the amounts awarded Choctaw claimants, under the fourteenth article of the treaty of Dancing Rabbit Creek, of September 27, 1830, for lands on which they resided, but which it is now impossible to give them, and in lieu of the scrip that has been awarded

under the act of August 24, 1842, and joint resolution of Congress of August 3d, 1846, not deliverable east by the third section of said law, per act of March 3, 1845, eighty-seven thousand two hundred dollars. (9 Stats. at Large, p. 555.)

ACT OF JULY 21, 1852.

Act to supply deficiencies.

For interest on the amounts awarded Choctaw claimants, under the fourteenth article of the treaty of Dancing Rabbit Creek, of 27 September, 1830, for lands on which they resided, but which it is impossible to give them, and in lieu of the scrip that has been awarded under the act of 23 August, 1842, not deliverable east, by the third section of said law, per act of third March, 1845, for the half year ending 30 June, 1852, twenty-one thousand eight hundred dollars: *Provided*, That after the 30th day of June, 1852, all payments of interest on said awards shall cease, and that the Secretary of the Interior be, and he is hereby, directed to pay said claimants the amount of principal awarded in each case respectively, and that the amount necessary for this purpose be, and the same is hereby, appropriated, not exceeding eight hundred and seventy-two thousand dollars: *Provided, further*, That the final payment and satisfaction of said awards shall be first ratified and approved as a final release of all claims of such parties under the fourteenth article of said treaty, by the proper national authority of the Choctaws, in such form as shall be prescribed by the Secretary of the Interior. (Act of July 21, 1852, 10 Stats. at Large, p. 19.)

ACT OF AUGUST 30, 1852.

Indian appropriation act.

Provided, That the Secretary of the Interior be, and he hereby is, authorized to examine the reservation claims

of the Choctaws, known as Bay Indians, and of those Choctaws in whose cases the scrip awarded by the late board of Commissioners has not been issued; and where he shall find that such Indians are clearly entitled to land under the fourteenth article of the treaty of 1830, and under the several acts heretofore passed in relation to such claims, he is hereby authorized to extend to such claimants the provisions applicable to such claims in the acts of 23d of August, 1842, and 3d of March, 1845. (10 Stats. at Large, p. 42.)

ACT OF MARCH 3, 1853.

Indian appropriation act.

The authority of the Secretary of the Interior to examine the claims of Choctaws to reservations of land under the treaty of 1830 shall extend to all cases recommended by either of the boards of Commissioners appointed to examine said claims, and his awards in scrip shall be received by them in full satisfaction of all their claims against the Government arising under said treaty, and the scrip thus awarded shall be received as other warrants in payment for any public lands subject to sale at private entry. (10 Stats. at Large, 227.)

TREATY OF 1855.

Whereas the political connexion heretofore existing between the Choctaw and the Chickasaw tribes of Indians has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a readjustment of their relations to each other and to the United States. And whereas the United States desire that the Choctaw Indians shall relinquish all claim to any

territory west of the one hundredth degree of west longitude, and, also, to make provision for the permanent settlement within the Choctaw country of the Wichita and certain other tribes or bands of Indians, for which purpose the Choctaws and Chickasaws are willing to lease, on reasonable terms, to the United States, that portion of their common territory which is west of the ninety-eighth degree of west longitude; and whereas the Choctaws contend that by a just and fair construction of the treaty of September 27, 1830, they are, of right, entitled to the net proceeds of the lands ceded by them to the United States, under said treaty, and have proposed that the question of their right to the same, together with the whole subject-matter of their unsettled claims, whether national or individual, against the United States, arising under the various provisions of said treaty, shall be referred to the Senate of the United States for final adjudication and adjustment; and whereas it is necessary for the simplification and better understanding of the relations between the United States and the Choctaw Indians that all their subsisting treaty stipulations be imbodied in one comprehensive instrument:

Now, therefore, the United States of America, by their Commissioner, George W. Manypenny, the Choctaws, by their commissioners, Peter P. Pitchlynn, Israel Folsom, Samuel Garland, and Dickson W. Lewis, and the Chickasaws, by their commissioners, Edmund Pickens and Sampson Folsom, do hereby agree and stipulate as follows, viz:

ART. I. The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country, viz: Beginning at a point on the Arkansas River, one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and running thence due south to Red River; thence up Red River to the point where the meridian of one hundred degrees west longitude crosses the same; thence

north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning.

And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guaranty the lands embraced within the said limits, to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common; so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however*, No part thereof shall ever be sold without the consent of both tribes; and that said land shall revert to the United States if said Indians and their heirs become extinct, or abandon the same.

ART. II. A district for the Chickasaws is hereby established, bounded as follows, to wit: Beginning on the north bank of Red River, at the mouth of Island Bayou, where it empties into Red River, about twenty-six miles on a straight line below the mouth of False Wachitta; thence running a northwesterly course along the main channel of said bayou to the junction of the three prongs of said bayou, nearest the dividing ridge between Wachitta and Low Blue Rivers, as laid down on Capt. R. L. Hunter's map; thence northerly along the eastern prong of Island Bayou to its source; thence due north to the Canadian River; thence west along the main Canadian to the ninety-eighth degree of west longitude; thence south to Red River, and thence down Red River to the beginning: *Provided, however*, If the line running due north from the eastern source of Island Bayou to the main Canadian shall not include Allen's or Wa-pa-nacka Academy within the Chickasaw district, then an offset shall be made from said line so as to leave said academy two miles within the Chickasaw district north, west, and south from the lines of boundary.

ART. III. The remainder of the country held in common by the Choctaws and Chickasaws shall constitute the

Choctaw district, and their officers and people shall at all times have the right of safe conduct and free passage through the Chickasaw district.

ART. IV. The government and laws now in operation and not incompatible with this instrument, shall be and remain in full force and effect within the limits of the Chickasaw district, until the Chickasaws shall adopt a constitution, and enact laws, superseding, abrogating, or changing the same. And all judicial proceedings within said district, commenced prior to the adoption of a constitution and laws by the Chickasaws, shall be conducted and determined according to existing laws.

ART. V. The members of either the Choctaw or the Chickasaw tribe, shall have the right, freely, to settle within the jurisdiction of the other, and shall thereupon be entitled to all the rights, privileges, and immunities of citizens thereof; but no member of either tribe shall be entitled to participate in the funds belonging to the other tribe. Citizens of both tribes shall have the right to institute and prosecute suits in the courts of either, under such regulations as may, from time to time, be prescribed by their respective legislatures.

ART. VI. Any person duly charged with a criminal offence against the laws of either the Choctaw or the Chickasaw tribe, and escaping into the jurisdiction of the other, shall be promptly surrendered upon the demand of the proper authorities of the tribe, within whose jurisdiction the offence shall be alleged to have been committed.

ART. VII. So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government, and full jurisdiction, over persons and property, within their respective limits; excepting, however, all persons with their property, who are not by birth, adoption, or otherwise citizens or members of either the Choctaw or Chick-

asaw tribe; and all persons, not being citizens or members of either tribe, found within their limits shall be considered intruders, and be removed from, and kept out of the same by the United States agent, assisted if necessary by the military, with the following exceptions, viz: Such individuals as are now, or may be in the employment of the Government, and their families; those peacefully traveling, or temporarily sojourning in the country or trading therein, under license from the proper authority of the United States, and such as may be permitted by the Choctaws or Chickasaws, with the assent of the United States agent, to reside within their limits, without becoming citizens or members of either of said tribes.

ART. VIII. In consideration of the foregoing stipulations, and immediately upon the ratification of this convention, there shall be paid to the Choctaws, in such manner as their national council shall direct, out of the national fund of the Chickasaws held in trust by the United States, the sum of one hundred and fifty thousand dollars.

ART. IX. The Choctaw Indians do hereby absolutely and forever quit-claim and relinquish to the United States all their right, title, and interest in and to any and all lands, west of the one hundredth degree of west longitude; and the Choctaws and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude, for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate therein; excluding, however, all the Indians of New Mexico, and, also those whose usual ranges at present are north of the Arkansas River, and whose permanent locations are north of the Canadian River, but including those bands whose permanent ranges are south of the Canadian, or between it and the Arkansas; which Indians shall be subject to the exclusive control of the United States, under such rules and regula-

tions, not inconsistent with the rights and interests of the Choctaws and Chickasaws, as may from time to time, be prescribed by the President for their government: *Provided, however*, the territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore.

ART. X. In consideration of the foregoing relinquishment and lease, and, as soon as practicable after the ratification of this convention, the United States will pay to the Choctaws the sum of six hundred thousand dollars, and to the Chickasaws the sum of two hundred thousand dollars, in such manner as their general councils shall respectively direct.

ART. XI. The Government of the United States, not being prepared to assent to the claim set up under the treaty of September the twenty-seventh, eighteen hundred and thirty, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the lands ceded by them to the United States by the treaty of September the twenty-seventh, eighteen hundred and thirty, deducting therefrom the cost of their survey and sale, and all just and proper expenditures, and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws to the lands remaining unsold, in order that a final settlement with them may be promptly effected. Or,

Second. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much.

ART. XII. In case the Senate shall award to the Choctaws the net proceeds of the lands, ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just—the settlement and payment to be made with the advice and under the direction of the United States agent for the tribe; and so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe, shall on their requisition be paid over to them by the United States. But should the Senate allow a gross sum, in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for, and bound to pay, all the individual claims as aforesaid; it being expressly understood that the adjudication and decision of the Senate shall be final.

ART. XIII. The amounts secured by existing treaty stipulations—viz, permanent annuity of three thousand dollars, under the second article of the treaty of eighteen hundred and five; six hundred dollars per annum for the support of light-horse men, under the thirteenth article of the treaty of eighteen hundred and twenty; permanent annuity of six thousand dollars for education, under the second article of the treaty of eighteen hundred and twenty-five; six hundred dollars per annum, permanent provision for the support of a blacksmith, under the sixth article of the treaty of eighteen hundred and twenty; and three hundred and twenty dollars, permanent provision for iron and steel, under the ninth article of the treaty of eighteen hundred and twenty-five—shall continue to be paid to, or expended for the benefit of, the Choctaws, as

heretofore; or the same may be applied to such objects of general utility as may, from time to time, be designated by the general council of the tribe, with the approbation of the Government of the United States. And the funds now held in trust by the United States for the benefit of the Choctaws, under former treaties, or otherwise, shall continue to be so held; together with the sum of five hundred thousand dollars out of the amount payable to them under articles eighth and tenth of this agreement, and also whatever balance shall remain, if any, of the amount that shall be allowed the Choctaws, by the Senate, under the twelfth article hereof, after satisfying the just liabilities of the tribe. The sums so to be held in trust shall constitute a general Choctaw fund, yielding an annual interest of not less than five per centum; no part of which shall be paid out as annuity, but shall be regularly and judiciously applied, under the direction of the general council of the Choctaws, to the support of their government, for purposes of education, and such other objects as may be best calculated to promote and advance the improvement, welfare, and happiness of the Choctaw people and their descendants.

ART. XIV. The United States shall protect the Choctaws and Chickasaws from domestic strife, from hostile invasion, and from aggression by other Indians and white persons not subject to their jurisdiction and laws; and for all injuries, resulting from such invasion or aggression, full indemnity is hereby guaranteed to the party or parties injured, out of the Treasury of the United States, upon the same principle and according to the same rules upon which white persons are entitled to indemnity for injuries or aggessions upon them, committed by Indians.

ART. XV. The Choctaws and Chickasaws shall promptly apprehend and deliver up all persons accused of any crime or offense against the laws of the United States, or, of any State thereof, who may be found within their

limits, on demand of any proper officer of a State, or of the United States.

ART. XVI. All persons licensed by the United States to trade with the Choctaws or Chickasaws, shall be required to pay to the respective tribes a moderate annual compensation for the land and timber used by them; the amount of such compensation, in each case, to be assessed by the proper authorities of said tribe, subject to the approval of the United States agent.

ART. XVII. The United States shall have the right to establish and maintain such military posts, post roads, and Indian agencies, as may be deemed necessary within the Choctaw and Chickasaw country, but no greater quantity of land or timber shall be used for said purposes than shall be actually requisite; and if, in the establishment or maintenance of such posts, post roads, and agencies, the property of any Choctaw or Chickasaw shall be taken, injured, or destroyed, just and adequate compensation shall be made by the United States. Only such persons as are, or may be in the employment of the United States, or subject to the jurisdiction and laws of the Choctaws or Chickasaws, shall be permitted to farm or raise stock within the limits of any of said military posts or Indian agencies. And no offender against the laws of either of said tribes, shall be permitted to take refuge therein.

ART. XVIII. The United States, or any incorporated company, shall have the right of way for railroads, or lines of telegraphs, through the Choctaw and Chickasaw country; but for any property taken or destroyed in the construction thereof, full compensation shall be made to the party or parties injured, to be ascertained and determined in such manner as the President of the United States shall direct.

ART. XIX. The United States shall, as soon as practicable, cause the eastern and western boundary lines of the tract of country described in the 1st article of this conven-

tion, and the western boundary of the Chickasaw district, as herein defined, to be run and permanently marked.

ART. XX. That this convention may conduce as far as possible to the restoration and preservation of kind and friendly feeling among the Choctaws and Chickasaws, a general amnesty of all past offenses committed within their country is hereby declared.

And in order that their relations to each other and to the United States may hereafter be conducted in a harmonious and satisfactory manner, there shall be but one agent for the two tribes.

ART. XXI. This convention shall supercede and take the place of all former treaties between the United States and the Choctaws, and, also, of all treaty stipulations between the United States and the Chickasaws, and between the Choctaws and Chickasaws, inconsistent with this agreement, and shall take effect and be obligatory upon the contracting parties, from the date hereof, whenever the same shall be ratified by the respective councils of the Choctaw and Chickasaw tribes, and by the President and Senate of the United States.

ART. XXII. It is understood and agreed that the expenses of the respective Commissioners of the two tribes signing these articles of agreement and convention, in coming to and returning from this city, and while here, shall be paid by the United States.

And whereas the said treaty having been submitted to the general council of the Chickasaw tribe, the general council did, on the third day of October, A. D. one thousand eight hundred and fifty-five, assent to, ratify, and confirm the same, with the following amendment: Add to the 19th article, 'By Commissioners to be appointed by the contracting parties hereto' by an instrument in writing, in the words and figures following, to wit:

"Whereas articles of agreement and convention were made and concluded on the twenty-second day of June, A. D. one thousand eight hundred and fifty-five, by and

between George W. Manypenny, Commissioner on the part of the United States; Peter P. Pitchlynn, Israel Folsom, Samuel Garland, and Dickson W. Lewis, commissioners, on the part of the Choctaws; and Edmund Pickens, and Sampson Folsom, commissioners on the part of the Chickasaws, at the city of Washington, in the District of Columbia, the preamble whereof is in the words and figures following, 'to wit:' Whereas the political connexion heretofore existing between the Choctaw and Chickasaw tribes of Indians, has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a readjustment of their relations to each other and to the United States; and whereas the United States desire that the Choctaw Indians shall relinqui-h all claim to any territory west of the one hundredth degree of west longitude, and also to make provision for the permanent settlement within the Choctaw country of the Wichita and certain other tribes or bands of Indians, for which purpose the Choctaws and Chickasaws are willing to lease, on reasonable terms, to the United States, that portion of their common territory which is west of the ninety-eighth degree of west longitude; and whereas the Choctaws contend that, by a just and fair construction of the treaty of September 27, 1830, they are of right entitled to the net proceeds of the lands ceded by them to the United States, under said treaty, and have proposed that the question of their right to the same, together with the whole subject-matter of their unsettled claims, whether national or individual, against the United States, arising under the various provisions of said treaty, shall be referred to the Senate of the United States for final adjudication and adjustment; and whereas it is necessary, for the simplification and better understanding of the relations between the United States and the Choctaw Indians, that all their subsisting treaty stipulations be embodied in one comprehensive instrument; and whereas, in the twenty-first article thereof, it is, among other things,

recited that said agreement 'shall take effect and be obligatory upon the contracting parties from the date hereof, whenever the same shall be ratified by the respective councils of the Choctaw and Chickasaw tribes of Indians and by the President and Senate of the United States:'"

"Now, therefore, be it known that the Chickasaws, in general council assembled, having duly considered said articles of agreement and convention, and each and every clause thereof, and being satisfied therewith, do, upon their part, hereby assent to, ratify, and confirm the same as stipulated and required, with the following amendment: Add to the nineteenth article, 'By commissioners to be appointed by the contracting parties hereto.'

"Done and approved at Tishomingo, in the Chickasaw district of the Choctaw Nation, this third day of October, in the year of our Lord, one thousand eight hundred and fifty-five.

"Passed the council.

"JOEL KEMP, *President.*
"D. COLBERT, *F. C.*

"Attest:
"CYRUS HARRIS, *Clerk of the council.*"

And whereas the Chickasaws, in general council assembled, did, on the 13th day of December, A. D. 1855, recede from and rescind the said amendment, and did ratify and confirm the said treaty, and every part thereof, by an instrument in writing, in the words and figures following, to wit:

"Whereas the Chickasaws, in general council assembled, after having duly considered the stipulations contained in a certain convention and agreement, made and entered into at the city of Washington, on the 22d day of June, A. D. 1855, between George W. Manypenny, Commissioner on the part of the United States; Peter. P. Pitchlynn, Israel Folsom, Samuel Garland, and Dickson W. Lewis, Commissioners on the part of the Choctaws; Edmund Pickens

and Sampson Folsom, Commissioners on the part of the Chickasaws, did, on the third day of October, A. D. 1855, at Tishomingo, in the Chickasaw district, Choctaw Nation, assent to, ratify, and confirm each and every part of said convention and agreement, with the following amendment, viz: Add to the 19th article, 'By Commissioners to be appointed by the contracting parties hereto' And whereas, said amendment was not duly considered and concurred in by the Choctaws in general council assembled; but said agreement and convention, and every part thereof, was assented to, ratified, and confirmed by said council without amendment: Now, therefore, be it known, that the Chickasaws, in general council assembled, having reconsidered said proposed amendment, do hereby recede from, and rescind the same, hereby assenting to, ratifying, and confirming said agreement and convention, and every part thereof.

"Done and approved at the council house at Tishomingo, Chickasaw district, Choctaw Nation, this 13th day of December, A. D. 1855.

"Approved December 13, 1855.

"J. McCOY,

"*President of the Council.*

"DOUGHERTY COLBERT, *F. C.*

"Attest:

"CYRUS HARRIS,

"*Secretary.*

"Signed in presence of—

"JACKSON FRAZIER,

"*Chief of Chicksaw District, Choctaw Nation.*

"DOUGLAS H. COOPER,

"*U. S. Indian Agent.*"

And whereas the said treaty having been submitted to the general council of the Choctaw tribe, the said general council did, on the 16th day of November, A. D. one thousand eight hundred and fifty-five, consent to and

ratify the same by an instrument in the words and figures following, to wit:

"Whereas articles of agreement and convention were made and concluded on the twenty-second day of June, A. D. one thousand eight hundred and fifty-five, by and between George W. Manypenny, Commissioner on the part of the United States; Peter P. Pitchlynn, Israel Folsom, Samuel Garland, and Dickson W. Lewis, commissioners on the part of the Choctaws; and Edmund Pickins and Sampson Folsom, commissioner on the part of the Chickasaws, at the city of Washington, in the District of Columbia, the preamble whereof is in the words and figures following, viz: 'Whereas the political connection heretofore existing between the Choctaw and Chickasaw tribes of Indians, has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a readjustment of their relations to each other and to the United States; and whereas the United States desire that the Choctaw Indians shall relinquish all claim to any territory west of the one hundredth degree of west longitude, and, also, to make provision for the permanent settlement within the Choctaw country of the Wichita and certain other tribes or bands of Indians, for which purpose the Choctaws and Chickasaws are willing to lease, on reasonable terms, to the United States, that portion of their common territory which is west of the ninety-eighth degree of west longitude; and whereas the Choctaws contend that, by a just and fair construction of the treaty of September 27, 1830, they are, of right, entitled to the net proceeds of the lands ceded by them to the United States, under said treaty, and have propossd that the question of their right to the same, together with the whole subject-matter of their unsettled claims, whether national or individual, against the United States arising under the various provisions of said treaty, shall be referred to the Senate of the United States, for final adjudication and adjustment;

and whereas it is necessary, for the simplification and better understanding of the relations between the United States and the Choctaw Indians, that all their subsisting treaty stipulations be embodied in one comprehensive instrument;' and whereas in the twenty-first article thereof, it is, among other things, recited that said agreement 'shall take effect and be obligatory upon the contracting parties from the date hereof, whenever the same shall be ratified by the respective councils of the Choctaw and Chickasaw tribes and by the President and Senate of the United States:'

"Now, therefore, be it known that the Choctaws, in general council assembled, having duly considered said articles of agreement and convention and each and every clause thereof, and being satisfied therewith, do, upon their part, hereby assent to, ratify, and confirm the same as stipulated and required.

"Done and approved at the council-house, at Fort Towson, in the Choctaw Nation, this sixteenth day of November in the year of our Lord one thousand eight hundred and fifty-five.

"TANDY WALKER,
"*President of the Senate.*
"KENNEDY M. CURTAIN,
"*Speaker of the House of Representatives.*

"Approved.

"GEO. W. HARKINS,
"*Chief of Ahpuck District.*
"N. COCHNAUER,
"*Chief of Pushematahn District.*
"ADAM CHRISTY,
"*Speaker, and Acting Chief of Moosholatubbee District.*

"Signed in presence of—
"DOUGLAS H. COOPER,
"*U. S. Indian Agent for Choctaw Tribe.*"

And whereas the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the 21st day of February, A. D. one thousand eight hundred and fifty-six, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:

"IN EXECUTIVE SESSION,
"SENATE OF THE UNITED STATES,
"*February* 21, 1856.

"*Resolved*, (two-thirds of the Senators present concurring), That the Senate advise and consent to the ratification of the articles of agreement and convention between the United States and the Choctaw and Chickasaw tribes of Indians, made and concluded at the city of Washington, the twenty-second day of June, Anno Domini one thousand eight hundred and fifty-five, by George W. Manypenny, Commissioner on the part of the United States; Peter P. Pitchlynn, Israel Folsom, Samuel Garland, and Dixon W. Lewis, commissioners on the part of the Choctaws: and Edmund Pickens, and Sampson Folsom, commissioners on the part of the Chickasaws."

"Attest:

"ASBURY DICKINS,
"*Secretary.*"

Now, therefore, be it known that I, Franklin Pierce, President of the United States of America, do in pursuance of the advice and consent of the Senate, as expressed in their resolution of the twenty-first day of February, one thousand eight hundred and fifty-six, accept, ratify, and confirm the said treaty.

In testimony whereof I have caused the seal of the United States to be hereto affixed, having signed the same with my hand.

Done at the city of Washington this fourth day of

March, A. D. one thousand eight hundred and fifty-six, and of the independence of the United States the eightieth.

[L. S.] FRANKLIN PIERCE

By the President.

W. L. MARCY,
Secretary of State.

(11 Stats. at Large, 611–619.)

SENATE RESOLUTIONS, MARCH 9, 1859.

Whereas the eleventh article of the treaty of June 22d, 1855, with the Choctaw and Chickasaw Indians, provides that the following questions be submitted for decision to the Senate of the United States:

"First, whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27th, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or,

"Secondly, whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much."

Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the 1st day of January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of $1.25 per acre; and, further, that they be also allowed twelve and a half cents per acre for the residue of said lands.

Resolved, That the Secretary of the Interior cause an account to be stated with the Choctaws, showing what amount is due them according to the above-prescribed principles of settlement, and report the same to Congress. (Senate Journal, 2d session, 35th Congress, p. 493.)

ACT OF MARCH 2, 1861.

Indian appropriation act.

For payment to the Choctaw Nation or tribe of Indians, on account of their claim under the eleventh and twelfth articles of the treaty, with said nation or tribe made the twenty-second of June, eighteen hundred and fifty-five, the sum of five hundred thousand dollars; two hundred and fifty thousand dollars of which sum shall be paid in money; and for the residue the Secretary of the Treasury shall cause to be issued to the proper authorities of the nation or tribe, on their requisition, bonds of the United States, authorized by law at the present session of Congress: *Provided*, That in the future adjustment of the claim of the Choctaws under the treaty aforesaid the said sum shall be charged against the said Indians. (12 Stats. at Large, 238.)

ACT OF JULY 5, 1862.

Indian appropriation act.

That all appropriations heretofore or hereafter made to carry into effect treaty stipulations, or otherwise, in behalf of any tribe or tribes of Indians, all or any portion of whom shall be in a state of actual hostility to the Government of the United States, including the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, Wichitas, and other affiliated tribes, may and shall be suspended and

postponed wholly or in part at and during the discretion and pleasure of the President: *Provided further*, That the President is authorized to expend such part of the amount heretofore appropriated and not expended and hereinbefore appropriated for the benefit of the tribes named in the preceding proviso as he may deem necessary, for the relief and support of such individual members of said tribes as have been driven from their homes and reduced to want on account of their friendship to the Government. And an account shall be kept of the sums so paid for the benefit of such tribe, which account shall be rendered to Congress at the commencement of the next session thereof. And all purchases of articles for the purposes above set forth shall be made on advertisement, as provided in other cases, and an account shall be rendered of all such purchases, with a statement of the prices paid therefor: *And provided further*, That in cases where the tribal organization of any Indian tribe shall be in actual hostility to the United States, the President is hereby authorized, by proclamation, to declare all treaties with such tribe to be abrogated by such tribe, if, in his opinion, the same can be done consistently with good faith and legal and national obligations. (12 Stat. at Large, 528.)

The *suspension* directed by the above statute was continued by subsequent acts passed in 1863, 1864, and 1865, and in substantially the same terms. (12 Stats. at Large, p. 793; 13 Stats. at Large, pp. 180, 562.)

ACT OF MARCH 3, 1865.

Indian appropriation act.

SEC. 6. *And be it further enacted*, That the Secretary of the Treasury be, and he is hereby, authorized and directed, in lieu of the bonds for the sum of two hun-

dred and fifty thousand dollars appropriated for the use of the Choctaw Indians, by an act entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes, for the year ending June thirty, eighteen hundred and sixty-two," approved March 2d, 1861, to pay to the Secretary of the Interior two hundred and fifty thousand dollars for the relief and support of individual members of Cherokee, Creek, Choctaw, Chickasaw, Seminole, Wichita, and other affiliated tribes of Indians, who have been driven from their homes and reduced to want on account of their friendship to the Government, as contemplated by the provisions of an act entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes, for the year ending June 30th, 1863," approved July 5th, 1862. (13 Stats. at Large, 562, 563.)

TREATY OF 1866.

ART. I. Permanent peace and friendship are hereby established between the United States and said nations; and the Choctaws and Chickasaws do hereby bind themselves respectively to use their influence and to make every exertion to induce the Indians of the plains to maintain peaceful relations with each other, with other Indians, and with the United States.

ART. II. The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in punishment of crime, whereof the parties shall have been duly convicted, in accordance with laws applicable to all members of the particular nation, shall ever exist in said nations.

ART. III. The Choctaws and Chickasaws in consideration of the sum of $300,000 hereby cede to the United

States the territory west of the 98° west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States at an interest not less than five per cent. in trust for the said nations until the legislatures of the Choctaw and Chickasaw Nations respectively shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent resident in the said nations at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations respectively, and also to give to such persons, who are residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulations the said sum of $300,000 shall be paid to the said Choctaw and Chickasaw Nations in the proportion of three-fourths to the former and one-fourth to the latter, less such sum at the rate of one hundred dollars per capita as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations respectively.

And should the said laws, rules, and regulations not be made by the legislatures of the said nations respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw Nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said territory in such manner as the United States shall deem proper—the United States agreeing,

within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove, those remaining or returning after having been removed from said nations, to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

ART. IV. The said nations further agree that all negroes, not otherwise disqualified or disabled, shall be competent witnesses in all civil and criminal suits and proceedings in the Choctaw and Chickasaw courts, any law to the contrary notwithstanding; and they fully recognize the right of the freedmen to a fair remuneration on reasonable and equitable contracts for their labor, which the law should aid them to enforce. And they agree on the part of their respective nations, that all laws shall be equal in their operation upon Choctaws, Chickasaws, and negroes, and that no distinction affecting the latter shall at any time be made; and that they shall be treated with kindness and be protected against injury; and they further agree that while the said freedmen, now in the Choctaw and Chickasaw Nations, remain in the said nations respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and families, in cases where they do not support themselves and families by hiring, not interfering with existing improvements without the consent of the occupant; it being understood that in the event of the making of the laws, rules, and regulations aforesaid, the forty acres aforesaid shall stand in place of the land cultivated as last aforesaid.

ART. V. A general amnesty of all past offences against the laws of the United States committed before the signing of this treaty by any member of the Choctaw or Chickasaw Nations is hereby declared; and the United States will especially request the States of Missouri, Kansas, Arkansas, and Texas to grant the like amnesty as to

all offences committed by any member of the Choctaw or Chickasaw Nations. And the Choctaws and Chickasaws, anxious for the restoration of kind and friendly feelings among themselves, do hereby declare an amnesty for all past offences against their respective governments, and no Indian or Indians shall be proscribed, or any act of forfeiture or confiscation passed against those who may have remained friendly to the United States, but they shall enjoy equal privileges with other members of said tribes, and all laws heretofore passed inconsistent herewith are hereby declared inoperative.

ART. VI. The Choctaws and Chickasaws hereby grant a right of way through their lands to any company or companies which shall be duly authorized by Congress, or by the legislatures of said nations respectively, and which shall, with the express consent and approbation of the Secretary of the Interior, undertake to construct a railroad through the Choctaw and Chickasaw Nations from the north to the south thereof, and from the east to the west side thereof, in accordance with the provisions of the 18th article of the treaty of June 22d, 1885, which provides that for any property taken or destroyed in the construction thereof full compensation shall be made to the party or parties injured, to be ascertained and determined in such manner as the President of the United shall direct. But such railroad company or companies, with all its or their agents and employees, shall be subject to the laws of the United States relating to intercourse with Indian tribes, and also to such rules and regulations as may be prescribed by the Secretary of the Interior for that purpose; and it is also stipulated and agreed that the nation through which the road or roads aforesaid shall pass may subscribe to the stock of the particular company or companies such amount or amounts as they may be able to pay for in alternate sections of unoccupied lands for a space of six miles on each side of said road or roads, at a price per acre to be agreed upon between said Choctaw and Chickasaw Nations

and the said company or companies, subject to the approval of the President of the United States: *Provided, however,* That said land thus subscribed shall not be sold or demised or occupied by any one not a citizen of the Choctaw or Chickasaw Nations, according to their laws and recognized usages: *Provided,* That the officers, servants, and employees of such companies necessary to the construction and management of said road or roads shall not be excluded from such occupancy as their respective functions may require, they being subject to the provisions of the Indian intercourse law and such rules and regulations as may be established by the Secretary of the Interior: *And provided, also,* That the stock thus subscribed by either of said nations shall have the force and effect of a first-mortgage bond on all that part of said road, appurtenances, and equipments situated and used within said nations respectively, and shall be a perpetual lien on the same, and the said nations shall have the right, from year to year, to elect to receive their equitable proportion of declared dividends of profits on their said stock, or interest on the par value at the rate of six per cent. per annum.

(2) And it is further declared, in this connection, that as fast as sections of twenty miles in length are completed with the rails laid ready for use, with all water and other stations necessary to the use thereof, as a first-class road, the said company or companies shall become entitled to patents for the alternate sections aforesaid, and may proceed to dispose thereof in the manner herein provided for, subject to the approval of the Secretary of the Interior.

(3) And it is further declared, also, in case of one or more of said alternate sections being occupied by any member or members of said nations respectively, so that the same cannot be transferred to the said company or companies, that the said nation or nations, respectively, may select any unoccupied section or sections as near as circumstances will permit to the said width of six miles

on each side of said road or roads, and convey the same as an equivalent for the section or sections so occupied as aforesaid.

ART. VII. The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory; provided, however, such legislation shall not in any wise interfere with or annul their present tribal organization, or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs of the Choctaw and Chickasaw nations respectively.

ART. VIII. The Choctaws and Chickasaws also agree that a council, consisting of delegates elected by each nation or tribe lawfully resident within the Indian Territory, may be annually convened in said Territory, to be organized as follows:

(1) After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said assembly, a census of each tribe, lawfully resident in said Territory, shall be taken, under the direction of the Superintendent of Indian Affairs, by competent persons, to be appointed by him, whose compensation shall be fixed by the Secretary of the Interior, and paid by the United States.

(2) The council shall consist of one member from each tribe or nation whose population shall exceed five hundred, and an additional member for each one thousand Indians, native or adopted, or each fraction of a thousand greater than five hundred, being members of any tribe lawfully resident in said Territory; and shall be selected by the tribes or nations respectively who may assent to the establishment of said general assembly; and if none should be thus formally selected by any nation or tribe, it shall be represented in said general assembly by the chief or chiefs and headmen of said tribes, to be taken in the order

of their ranks as recognized in tribal usage, in the number and proportions above indicated.

(3) After the said census shall have been taken and completed, the Superintendent of Indian Affairs shall publish and declare to each tribe the number of members of said council to which they shall be entitled under the provisions of this article; and the persons so to represent the said tribes shall meet at such time and place as he shall designate; but thereafter the time and place of the sessions of the general assembly shall be determined by itself: *Provided*, That no session in any one year shall exceed the term of thirty days, and provided that special sessions may be called whenever, in the judgment of the Secretary of the Interior, the interests of said tribes shall require it.

(4) The general assembly shall have power to legislate upon all subjects and matters pertaining to the intercourse and relations of the Indian tribes and nations resident in the said territory; the arrest and extradition of criminals escaping from one tribe to another; the administration of justice between members of the several tribes of the said territory, and persons other than Indians and members of said tribes or nations; the construction of works of internal improvement, and the common defence and safety of the nations of the said territory. All laws enacted by said council shall take effect at the times therein provided, unless suspended by the Secretary of the Interior or the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States, or the laws of Congress, or existing treaty stipulations with the United States; nor shall said council legislate upon matters pertaining to the legislative, judicial, or other organization, laws, or customs of the several tribes or nations except as herein provided for.

(5) Said council shall be presided over by the Superintendent of Indian Affairs, or in case of his absence from any cause, the duties of the Superintendent enumerated in

this article shall be performed by such person as the Secretary of the Interior shall indicate.

(6) The Secretary of the Interior shall appoint a secretary of said council, whose duty it shall be to keep an accurate record of all the proceedings of said council, and to transmit a true copy thereof, duly certified by the Superintendent of Indian Affairs, to the Secretary of the Interior immediately after the sessions of said council shall terminate. He shall be paid five hundred dollars, as an annual salary, by the United States.

(7) The members of the said council shall be paid by the United States four dollars per diem while in actual attendance thereon; and four dollars mileage for every twenty miles going and returning therefrom by the most direct route, to be certified by the secretary of said council and the presiding officer.

(8) The Choctaws and Chickasaws also agree that a court or courts may be established in said territory with such jurisdiction and organization as Congress may prescribe: *Provided*, The same shall not interfere with the local judiciary of either of said nations.

(9) Whenever Congress shall authorize the appointment of a Delegate from said Territory it shall be the province of said council to elect one from among the nations represented in said council.

(10) And it is further agreed that the Superintendent of Indian Affairs shall be the executive of the said Territory, with the title of "Governor of the Territory of Oklahoma," and that there shall be a secretary of the said Territory to be appointed by the said Superintendent; that the duty of the said governor, in addition to those already imposed on the Superintendent of Indian Affairs, shall be such as properly belong to an executive officer charged with the execution of the laws, which the said council is authorized to enact under the provisions of this treaty; and that for this purpose he shall have authority to appoint a marshal of said Territory, and an interpreter; the said

marshal to appoint such deputies, to be paid by fees, as may be required to aid him in the execution of his proper functions; and be the marshal of the principal court of said Territory that may be established under the provisions of this treaty.

(11) And the said marshal and the said secretary shall each be entitled to a salary of $500 per annum, to be paid by the United States, and such fees in addition thereto as shall be established by said governor, with the approbation of the Secretary of the Interior; it being understood that the said fee lists may at any time be corrected and altered by the Secretary of the Interior, as the experience of the system proposed herein to be established shall show to to be necessary, and shall in no case exceed the fees paid to marshals of the United States for similar services. The salary of the interpreter shall be $500, to be paid in like manner by the United States.

(12) And the United States agree that in the appointment of marshals and deputies, preference, qualifications being equal, shall be given to competent members of the said nations, the object being to create a laudable ambition to acquire the experience necessary for political offices of importance in the respective nations.

(13) And whereas it is desired by the said Choctaw and Chickasaw Nations that the said council should consist of an upper and lower house, it is hereby agreed that whenever a majority of the tribes or nations represented in said council shall desire the same, or the Congress of the United States shall so prescribe, there shall be, in addition to the council now provided for, and which shall then constitute the lower house, an upper house consisting of one member from each tribe entitled to representation in the council now provided for, the relations of the two houses to each other being such as prevail in the States of the United States; each house being authorized to choose its presiding officer and clerk to perform the duties appropriate to such offices; and it being the duty, in addition, of the clerks of

each house to make out and transmit to the Territorial secretary fair copies of the proceedings of the respective houses immediately after their respective sessions, which copies shall be dealt with by the said secretary as is now provided in the case of copies of the proceedings of the council mentioned in this act, and the said clerks shall each be entitled to the same per diem as members of their respective houses, and the presiding officers to double that sum.

ART. IX. Such sums of money as have, by virtue of treaties existing in the year 1861, been invested for the purposes of education, shall remain so invested, and the interest thereof, including any arrears which may have accrued, shall be applied for the same purposes, in such manner as shall be designated by the legislative authorities of the Choctaw and Chickasaw Nations respectively.

ART. X. The United States reaffirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion, and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislation, from and after the close of the fiscal year ending on the 30th June in the year eighteen hundred and sixty-six.

ART. XI. Whereas the land occupied by the Choctaw and Chickasaw Nations, and described in the treaty between the United States and said nations, of June 22d, 1855, is now held by the members of said nations in common under the provisions of the said treaty; and whereas it is believed that the holding of the said land in severalty will promote the general civilization of said nations, and tend to advance their permanent welfare, and the best interests of their individual members, it is hereby agreed that should the Choctaw and Chickasaw people, through their respective legislative councils, agree to the survey and dividing of their land on the system of the United States, the land aforesaid east of the ninety-eighth degree of west longitude

shall be, in view of the arrangements hereinafter mentioned, surveyed and laid off in ranges, townships, sections, and parts of sections; and that, for the purpose of facilitating such surveys, and for the settlement and distribution of said land, as hereinafter provided, there shall be established at Boggy Depot, in the Choctaw territory, a land office; and that, in making the said surveys, and conducting the business of the said office, including the appointment of all necessary agents and surveyors, the same system shall be pursued which has heretofore governed in respect to the public lands of the United States, it being understood that the said surveys shall be made at the cost of the United States, and by their agents and suveyors, as in the case of their own public lands, and that the officers and employees shall receive the same compensation as is paid to officers and employees in the land offices of the United States in Kansas.

ART. XII. The maps of said surveys shall exhibit as far as practicable the outlines of the actual occupancy of members of the said nations, respectively; and when they are completed shall be returned to the said land office at Boggy Depot for inspection by all parties interested, when notice for ninety days shall be given of such return, in such manner as the legislative authorities of the said nations respectively shall prescribe, or in the event of said authorities failing to give such notice in a reasonable time, in such manner as the register of said land office shall prescribe, calling upon all parties interested to examine said maps, to the end that errors, if any, in the location of such occupancies, may be corrected.

ART. XIII. The notice required in the above article shall be given, not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi and Tennessee, Louisiana, Texas, Arkansas, and Alabama, to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Nations may be informed and have opportu-

nity to exercise the rights hereby given to resident Choctaws and Chickasaws: *Provided*, That before any such absent Choctaw or Chickasaw shall be permitted to select for him or herself, or others, as hereinafter provided, he or she shall satisfy the register of the land office of his or her intention, or the intention of the party for whom the selection is to be made, to become bona fide resident in the said nation within five years from the time of selection; and should the said absentee fail to remove into said nation, and occupy and commence an improvement on the land selected within the time aforesaid, the said selection shall be canceled, and the land shall thereafter be discharged from all claim on account thereof.

ART. XIV. At the expiration of the ninety days aforesaid, the legislative authorities of the said nations respectively, shall have the right to select one quarter-section of land in each of the counties of said nations respectively, in trust for the establishment of seats of justice therein, and also, as many quarter-sections as the said legislative councils may deem proper for the permanent endowment of schools, seminaries, and colleges in said nation, provided such selection shall not embrace or interfere with any improvement in the actual occupation of any member of the particular nation without his consent; and, provided, the proceeds of sale of the quarter-sections selected for seats of justice shall be appropriated for the erection or improvement of public buildings in the county in which it is located.

ART. XV. At the expiration of the ninety days' notice aforesaid, the selection which is to change the tenure of the land in the Choctaw and Chickasaw Nations from a holding in common to a holding in severalty shall take place, when every Choctaw and Chickasaw shall have the right to one quarter-section of land, whether male or female, adult or minor, and if in actual possession or occupancy of land improved or cultivated by him or her, shall have a prior right to the quarter-section in which

his or her improvement lies; and every infant shall have selected for him or her a quarter-section of land in such location as the father of such infant, if there be a father living, and, if no father living, then the mother, or guardian, and should their be neither father, mother, nor guardian, then as the probate judge of the county, acting for the best interest of such infant, shall select.

ART. XVI. Should an actual occupant of land desire, at any time prior to the commencement of the surveys aforesaid, to abandon his improvement, and select and improve other land, so as to obtain the prior right of selection thereof, he or she shall be at liberty to do so; in which event the improvements so abandoned shall be open to selection by other parties: *Provided*, That nothing herein contained shall authorize the multiplication of improvements so as to increase the quantity of land beyond what a party would be entitled to at the date of this treaty.

ART. XVII. No selection to be made under this treaty shall be permitted to deprive or interfere with the continued occupation by the missionaries established in the respective nations, of their several missionary establishments; it being the wish of the parties hereto to promote and foster an influence so largely conducive to civilization and refinement. Should any missionary who has been engaged in missionary labor for five consecutive years before the date of this treaty in the said nations, or either of them, or three consecutive years prior to the late rebellion, and who, if absent from the said nations, may desire to return, wish to select a quarter-section of land, with a view to a permanent home for himself and family, he shall have the privilege of doing so; provided no selection shall include any public buildings, schools, or seminary; and a quantity of land not exceeding six hundred and forty acres, to be selected according to legal subdivisions in one body, and to include their improvements, is hereby granted to every religious society or denomination which has erected, or which, with the consent of the In-

dians, may hereafter erect buildings within the Choctaw and Chickasaw country for missionary or educational purposes, but no land thus granted, nor the buildings which have been or may be erected thereon, shall ever be sold or otherwise disposed of, except with the consent of the legislatures of said nations respectively, and approval of the Secretary of the Interior; and whenever such lands or buildings shall be sold or disposed of, the proceeds thereof shall be applied under the direction of the Secretary of the Interior to the support and maintenance of other similar establishments for the benefit of the Coctaws and Chickasaws, and such other persons as may hereafter become members of their nations, according to their laws, customs, and usages

ART. XVIII. In making a selection for children the parent shall have a prior right to select land adjacent to his own improvements, or selection, provided such selection shall be made within thirty days from the time at which selections under this treaty commence.

ART. XIX. The manner of selecting as aforesaid shall be by an entry with the register of the land-office, and all selections shall be made to conform to the legal subdivisions of the said lands as shown by the surveys aforesaid on the maps aforesaid; it being understood that nothing herein contained is to be construed to confine a party selecting to one section, but he may take contiguous parts of sections by legal subdivisions in different sections not exceeding together a quarter-section.

ART. XX. Prior to any entries being made under the foregoing provisions, proof of improvements or actual cultivation, as well as the number of persons for whom a parent or guardian or probate judge of the county proposes to select, and of their right to select, and of his or her authority to select for them, shall be made to the register and receiver of the land office, under regulations to be prescribed by the Secretary of the Interior.

ART. XXI. In every township the sections of land

numbered 16 and 36 shall be reserved for the support of schools in said township; provided that if the same has been already occupied by a party or parties having the right to select it, or it shall be so sterile as to be unavailable, the legislative authorities of the particular nation shall have the right to select such other unoccupied sections as they may think proper.

ART. XXII. The right of selection hereby given shall not authorize the selection of any land required by the United States as a military post, or Indian agency, not exceeding one mile square, which, when abandoned, shall revert to the nation in which the land lies.

ART. XXIII. The register of the land-office shall inscribe in a suitable book or books, in alphabetical order, the name of every individual for whom a selection shall be made, his or her age, and a description of the land selected.

ART. XXIV. Whereas it may be difficult to give to each occupant of an improvement a quarter-section of land, or even a smaller subdivision, which shall include such improvement, in consequence of such improvements lying in towns, villages, or hamlets, the legislative authorities of the respective nations shall have power, where, in their discretion they think it expedient, to lay off into town lots any section or part of a section so occupied, to which lots the actual occupants, being citizens of the respective nations, shall have pre-emptive right, and upon paying into the treasury of the particular nation the price of the land as fixed by the respective legislatures, exclusive of the value of said improvement, shall receive a conveyance thereof. Such occupant shall not be prejudiced thereby in his right to his selection elsewhere. The town lots which may be unoccupied shall be disposed of for the benefit of the particular nation, as the legislative authorities may direct from time to time. When the number of occupants of the same quarter-section shall not be such as to authorize the legislative authorities to

lay out the same, or any part thereof into town lots, they may make such regulations for the disposition thereof as they may deem proper, either by subdivision of the same, so as to accommodate the actual occupants, or by giving the right of prior choice to the first occupant in point of time, upon paying the others for their improvements, to be valued in such way as the legislative authorities shall prescribe or otherwise. All occupants retaining their lots under this section, and desiring, in addition, to make a selection, must pay for the lots so retained as in the case of town lots. And any Choctaw or Chickasaw who may desire to select a sectional division other than that on which his homestead is, without abandoning the latter, shall have the right to purchase the homestead sectional division, at such price as the respective legislatures may prescribe.

ART. XXV. During ninety days from the expiration of the ninety-day notice aforesaid, the Choctaws and Chickasaws shall have the exclusive right to make selections as aforesaid, and at the end of that time the several parties shall be entitled to patents for their respective selections, to be issued by the President of the United States, and countersigned by the chief executive officer of the nation in which the land lies, and recorded in the records of the executive office of the particular nation, and copies of the said patents under seal shall be evidence in any court of law or equity.

ART. XXVI. The right here given to Choctaws and Chickasaws, respectively, shall extend to all persons who have become citizens by adoption, or intermarriage, of either of said nations, or who may hereafter become such.

ART. XXVII. In the event of disputes arising in regard to the rights of parties to select particular quarter-sections or other divisions of said land, or in regard to the adjustment of boundaries so as to make them conform to legal divisions and subdivisions, such disputes shall be settled by the register of the land office and the chief ex-

ecutive officer of the nation in which the land lies, in a summary way, after hearing the parties, and if said register and chief officer cannot agree, the two to call in a third party who shall constitute a third referee, the decision of any two of whom shall be final, without appeal.

ART. XXVIII. Nothing contained in any law of either of the said nations shall prevent parties entitled to make selections contiguous to each other; and the Choctaw and Chickasaw Nations hereby agree to repeal all laws inconsistent with this provision.

ART. XXIX. Selections made under this treaty shall, to the extent of one quarter-section, including the homestead or dwelling, be inalienable for the period of twenty-one years from the date of such selection, and upon the death of the party in possession shall descend according to the laws of the nation where the land lies, and in the event of his or her death without heirs, the said quarter-section shall escheat to and become the property of the nation.

ART. XXX. The Choctaw and Chickasaw Nations will receive into their sespective districts east of the ninety-eighth degree of west longitude, in the proportion of one-fourth in the Chickasaw, and three-fourths in the Choctaw Nation, civilized Indians from the tribes known by the general name of the Kansas Indians, being Indians to the north of the Indian Territory, not exceeding 10,000 in number, who shall have in the Choctaw and Chickasaw Nations respectively the same rights as the Choctaws and Chickasaws of whom they shall be the fellow-citizens, governed by the same laws, and enjoying the same privileges, with the exception of the right to participate in the Choctaw and Chickasaw annuities, and other moneys, and in the public domain, should the same or the proceeds thereof be divided *per capita* among said Choctaws and Chickasaws, and among others the right to select land as herein provided for Choctaws and Chickasaws, after the expiration of the ninety days during which the selections of land

are to be made as aforesaid by said Choctaws and Chickasaws, and the Choctaw and Chickasaw Nations pledge themselves to treat the said Kansas Indians in all respects with kindness and forbearance, aiding them in good faith to establish themselves in their new homes, and to respect all their customs and usages not inconsistent with the constitution and laws of the Choctaw and Chickasaw Nations respectively. In making selections after the advent of the Kansas Indians and their actual occupancy of land in said nation, such occupancy shall have the same effect in their behalf as the occupancies of the Choctaws and Chickasaws; and after the said Choctaws and Chickasaws have made their selections as aforesaid, the said persons of African descent, mentioned in the third article of the treaty, shall make their selection as therein provided, in the event of the making of the laws, rules, and regulations aforesaid, after the expiration of ninety days, from the date at which the Kansas Indians are to make their selections as therein provided, and the actual occupancy of such persons of African descent shall have the same effect in their behalf as the occupancies of Choctaws and Chickasaws.

ART. XXXI. And whereas some time must elapse before the surveys, maps, and selections herein provided for can be completed so as to permit the said Kansas Indians to make their selections in their order, during which time the United States may desire to remove the said Indians from their present abiding places, it is hereby agreed that the said Indians may at once come into the Choctaw and Chickasaw Nations, settling themselves temporarily as citizens of the said nations, respectively, upon such land as suits them and is not already occupied.

ART. XXXII. At the expiration of two years, or sooner, if the President of the United States shall so direct, from the completion of the surveys and maps aforesaid, the officers of the land offices aforesaid shall deliver to the executive departments of the Choctaw and Chickasaw Nations respectively all such documents as may be neces-

sary to elucidate the land titles as settled according to this treaty, and forward copies thereof, with the field-notes, records, and other papers pertaining to said titles, to the Commissioner of the General Land Office; and thereafter grants of land and patents therefor shall be issued in such manner as the legislative authorities of said nations may provide for all the unselected portions of the Choctaw and Chickasaw districts, as defined by the treaty of June 22, 1855.

ART. XXXIII. All lands selected as herein provided, shall thereafter be held in severalty by the respective parties, and the unselected land shall be the common property of the Choctaw and Chickasaw Nations in their corporate capacities, subject to the joint control of their legislative authorities.

ART. XXXIV. Should any Choctaw or Chickasaw be prevented from selecting for himself or herself during the ninety days aforesaid, the failure to do so shall not authorize another to select the quarter section containing his improvement, but he may at any time make his selection thereof, subject to having his boundaries made to conform to legal divisions as aforesaid.

ART. XXXV. Should the selections aforesaid not be made before the transfer of the land records to the executive authorities of said nations respectively, they shall be made according to such regulations as the legislative authorities of the two nations respectively may prescribe, to the end that full justice and equity may be done to the citizens of the respective territories.

ART. XXXVI. Should any land that has been selected under the provisions of this treaty be abandoned and left uncultivated for the space of seven years by the party selecting the same, or his heirs, except in the case of infants under the age of twenty-one years, or married women, or persons *non compos mentis*, the legislative authorities of the nation where such land lies may either rent the same for the benefit of those interested, or dispose of the same

otherwise for their benefit, and may pass all laws necessary to give effect to this provision.

ART. XXXVII. In consideration of the right of selection hereinbefore accorded to certain Indians other than the Choctaws and Chickasaws, the United States agree to pay to the Choctaw and Chicasaw Nations out of the funds of Indians removing into said nations respectively, under the provisions of this treaty, such sum as may be fixed by the legislatures of said nations, not exceeding one dollar per acre, to be divided between the said nations in the proportion of one-fourth to the Chickasaw Nation, and three-fourths to the Choctaw Nation, with the understandstanding that, at the expiration of twelve months, the actual number of said immigrating Indians shall be ascertained, and the amount paid that may be actually due at the rate aforesaid; and should still further immigrations take place from among said Kansas Indians, still further payments shall be made accordingly from time to time.

ART. XXXVIII. Every white person who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw Nations according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws, in all respects as though he was a native Choctaw or Chickasaw.

ART. XXXIX. No person shall be licensed to trade with the Choctaws or Chickasaws except by the agent, with the advice and consent of the legislative authorities of the nation he may propose to trade in; but no license shall be required to authorize any member of the Choctaw or Chickasaw Nations to trade in the Choctaw or Chickasaw country, who is authorized by the proper authority of the nation, nor to authorize Choctaws or Chickasaws to sell flour, meal, meat, fruit, and other provisions, stock,

wagons, agricultural implements, or tools brought from the United States into the said country.

ART. XL. All restrictions contained in any treaty heretofore made, or in any regulation of the United States upon the sale or other disposition of personal chattel property by Choctaws or Chickasaws, are hereby removed.

ART. XLI. All persons who are members of the Choctaw or Chickasaw Nations, and are not otherwise disqualified or disabled, shall hereafter be competent witnesses in all civil and criminal suits and proceedings in any courts of the United States, any law to the contrary notwithstanding.

ART. XLII. The Choctaw and Chickasaw Nations shall deliver up persons accused of crime against the United States, or any of them, who may be found within their limits, on the requisition of the governor of any State, or of the United States.

ART. XLIII. The United States promise and agree that no white person, except officers, agents, and employees of the Government, and of any internal improvement company, or persons travelling through or temporarily sojourning in the said nations, or either of them, shall be permitted to go into said Territory, unless formally incorporated and naturalized by the joint action of the authorities of both nations into one of the said nations of Choctaws and Chickasaws, according to their laws, customs, or usages; but this article is not to be construed to affect parties heretofore adopted, or to prevent the employment temporarily of white persons who are teachers, mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or to be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of the said nations.

ART. XLIV. Post-offices shall be established and maintained by the United States at convenient places in the Choctaw and Chickasaw Nations, to and from which the mails shall be carried at reasonable intervals at the rates of postage prevailing in the United States.

ART. XLV. All the rights, privileges, and immunities heretofore possessed by the said nations or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and are hereby declared to be in full force, so far as they are consistent with the provisions of this treaty.

ART. XLVI. Of the moneys stipulated to be paid to the Choctaws and Chickasaws under this treaty for the cession of the leased district, and the admission of the Kansas Indians among them, the sum of $150,000 shall be advanced and paid to the Choctaws, and $50,000 to the Chickasaws, through their respective treasurers, as soon as practicable after the ratification of this treaty, to be repaid out of said moneys or any other moneys of said nations in the hands of the United States; the residue not affected by any provision of this treaty to remain in the Treasury of the United States at an annual interest of not less than five per cent., no part of which shall be paid out as annuity, but shall be annually paid to the treasurer of said nations respectively, to be regularly and judiciously applied, under the direction of their respective legislative councils, to the support of their government, the purposes of education, and such other objects as may be best calculated to promote and advance the welfare and happiness of said nations and their people respectively.

ART. XLVII. As soon as practicable after the lands shall have been surveyed and assigned to the Choctaws and Chickasaws in severalty as herein provided, upon application of their respective legislative councils, and with the assent of the President of the United States, all the annuities and funds invested and held in trust by the

United States for the benefit of said nations respectively, shall be capitalized or converted into money, as the case may be, and the aggregate amounts thereof belonging to each nation shall be equally divided and paid per capita to the individuals thereof respectively, to aid and assist them in improving their homesteads and increasing or acquiring flocks and herds, and thus encourage them to make proper efforts to maintain successfully the new relations which the holding of their lands in severalty will involve: *Provided, nevertheless,* That there shall be retained by the United States such sum as the President shall deem sufficient of the said moneys, to be invested, that the interest thereon may be sufficient to defray the expenses of the governments of said nations, respectively, together with a judicious system of education, until these objects can be provided for by a proper system of taxation, and whenever this shall be done to the satisfaction of the President of the United States the moneys so retained shall be divided in the manner and for the purpose above mentioned.

ART. XLVIII. Immediately after the ratification of this treaty there shall be paid out of the funds of the Choctaws and Chickasaws in the hands of the United States, twenty-five thousand dollars to the Choctaw and twenty-five thousand dollars to the Chickasaw commissioners, to enable them to discharge obligations incurred by them for various incidental and other expenses to which they have been subjected, and for which they are now indebted.

ART. XLIX. And it is further agreed that a commission, to consist of a person or persons to be appointed by the President of the United States, shall be appointed immediately on the ratification of this treaty, and shall take into consideration and determine the claim of such Choctaws and Chickasaws as allege they have been driven during the late rebellion from their homes in the Choctaw Nation on account of their adhesion to the United States, for damages, with power to make such award as may be

consistent with equity and good conscience, taking into view all circumstances, whose report, when ratified by the Secretary of the Interior, shall be final, and authorize the payment of the amount from any moneys of said nations in the hands of the United States as the said commission may award.

ART. L. Whereas Joseph G. Heald and Reuben Wright, of Massachusetts, were licensed traders in the Choctaw country at the commencement of the rebellion, and claim to have sustained large losses on account of said rebellion, by the use of their property by said nation, and that large sums of money are due them for goods and property taken or sold to the members of said nation, and money advanced to said nation; and whereas other loyal citizens of the United States may have just claims of the same character: It is hereby agreed and stipulated, that the President of the United States shall, within three months from the ratification of this treaty, appoint a commission to consist of one or more discreet persons to investigate said claims and fully examine the same; and such sum or sums of money as shall by the report of said commission, approved by the Secretary of the Interior, be found due to such persons, not exceeding ninety thousand dollars, shall be paid by the United States to the persons entitled thereto, out of any money belonging to said nation in the possession of the United States: *Provided*, That no claim for goods or property of any kind shall be allowed or paid, in whole or in part, which shall have been used by said nation or any member thereof, in aid of the rebellion, with the consent of said claimants: *Provided, also*, That if the aggregate of said claims thus allowed and approved shall exceed said sum of ninety thousand dollars, then that sum shall be applied *pro rata* in payment of the claims so allowed.

ART. LI. It is further agreed, that all treaties and parts of treaties inconsistent herewith be, and the same are hereby declared null and void.

In testimony whereof the said Dennis N. Cooley, Elijah Sells, and E. S. Parker, Commissioners on behalf of the United States, and the said Commissioners on behalf of the Choctaw and Chickasaw Nations, have hereunto set their hands and seals the day and year first above written.

D. N. COOLEY, [SEAL.]
Com. Ind. Affairs,
ELIJAH SELLS, [SEAL.]
Sup't Ind. Affairs,
E. S. PARKER, [SEAL.]
Sp'l Com'r,
Commissioners for United States.

ALFRED WADE, [SEAL.]
ALLEN WRIGHT, [SEAL.]
JAMES RILEY, [SEAL.]
JOHN PAGE, [SEAL.]
Choctaw Commissioners.

CAMPBELL LE FLORE,
Secretary.

WINCHESTER COLBERT, [SEAL.]
Governor Chickasaw Nation.

EDMUND PICKENS, [SEAL.]
HOLMES COLBERT, [SEAL.]
COLBERT CARTER, [SEAL.]
ROBERT H. LOVE, [SEAL.]
Chickasaw Commissioners.

E. S. MITCHELL,
Secretary.

Signed, sealed, and delivered in the presence of—

JOHN H. B. LATROBE.
P. P. PITCHLYNNE,
Principal Chief Choctaw Nation.
DOUGLAS H. COOPER.
J. HARLAN,
U. S. Indian Ag't for Cherokees.
CHAS. E. MIX,
Chief Clerk Indian Bureau.

And whereas the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the twenty-eighth day of June, one thousand eight hundred and sixty-six, advise and consent to the ratification of the same, by a resolution, with amendments, in the words and figures following, to wit:

IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
June 28, 1866.

Resolved, (two-thirds of the Senators present concurring), That the Senate advise and consent to the ratification of the articles of agreement and convention between the United States and the Choctaw and Chickasaw Nations of Indians, made and concluded at the city of Washington the twenty-eighth day of April, in the year eighteen hundred and sixty-six, by Dennis N. Cooley, Elijah Sells, and E. S. Parker, Special Commissioners on the part of the United States, and Alfred Wade, Allen Wright, James Riley, and John Page, Commissioners on the part of the Choctaws, and Winchester Colbert, Edmund Pickens, Holmes Colbert, Colbert Carter, and Robert H. Love, Commissioners on the part of the Chickasaws, with the following

AMENDMENTS.

1st. At the end of article 5 add the following:

The people of the Choctaw and Chickasaw Nations stipulate and agree to deliver up to any duly authorized agent of the United States all public property in their possession which belong[s] to the late so-called "Confederate States of America," or the United States, without any reservation wha[t]soever, particularly ordnance, ordnance stores, and arms of all kinds.

2d. Article 9, lines 4 and 5, strike out the words "including any arrears which may have accrued."

3d. Article 39, lines 1, 2, and 3, strike out the following: "Be licensed to trade with the Choctaws or Chickasaws, except by the agent, with the advice and consent," and insert in lieu thereof: *No person shall expose goods or other articles for sale as a trader without a permit.*

4th. Strike out article 42, and insert in lieu thereof the following as a substitute: *The Choctaw and Chickasaw Nations shall deliver up all persons accused of crime against the United States, who may be found within their respective limits on the requisition of the governor of any State, for a crime committed against the laws of said State, and upon the requisition of the judge of the district court of the United States for the district within which the crime was committed.*

5th. Article 46, line 13, strike out the words "not less than."

6th. Article 49, line 3, after the words "United States" insert: *not exceeding three.*

7th. Article [50], line 11 to and including line 15, strike out the following words: "That the President of the United States shall, within three months from the ratification of this treaty, appoint a commission to consist of one or more discreet persons," and insert in lieu thereof: *That the commission provided for in the preceding article shall.*

Attest: J. W. FORNEY,
Secretary.

And whereas the foregoing amendments having been fully explained and interpreted to the respective Commissioners of the Choctaw and Chickasaw Nations of Indians hereinbefore named, they did, on the second day of July, one thousand eight hundred and sixty-six, give their free and voluntary assent to said amendments, in the words and figures following, to wit:

Whereas the Senate of the United States did, on the 28th day of June, A. D. 1866, advise and consent to the ratification of the articles of agreement and convention between the United States and the Choctaw and Chickasaw

Nations of Indians, made and concluded at the city of Washington, the twenty-eighth day of April, in the year eighteen hundred and sixty-six, by Dennis N. Cooley, Elijah Sells, and E. S. Parker, special Commissioners on the part of the United States, and Alfred Wade, Allen Wright, James Riley, and John Page, commissioners on the part of the Choctaws, and Winchester Colbert, Edmund Pickens, Holmes Colbert, Colbert Carter, and Robert H. Love, commissioners on the part of the Chickasaws, with the following amendments, to wit:

1st. At the end of Article 5 add the following:

The people of the Choctaw and the Chickasaw Nations stipulate and agree to deliver up to any duly authorized agent of the United States all public property in their possession which belong to the late so-called "Confederate States of America" or the United States, without any reservation whatsoever, particularly ordnance, ordnance stores, and arms of all kinds.

2d. Article 9, lines 4 and 5, strike out the words "including any arrears which may have accrued."

3d. Article 39, lines 1, 2, and 3, strike out the following: "Be licensed to trade with the Choctaws or Chickasaws except by the agent, with the advice and consent," and insert in lieu thereof: *No person shall expose goods or other articles for sale as a trader without a permit.*

4th. Strike out article 42, and insert in lieu thereof the following as a substitute:

The Choctaw and Chickasaw Nations shall deliver up persons accused of crime against the United States, who may be found within their respective limits, on the requisition of the governor of any State for a crime committed against the laws of said State, and upon the requisition of the judge of the district court of the United States for the district within which the crime was committed.

5th. Article 46, line 13, strike out the words "not less than."

6th. Article 49, line 3, after the words "United States," insert *not exceeding three.*

7th. Article (50), lines 11 to and including line 15, strike out the following words: "That the President of the United States shall, within three months from the ratification of this treaty, appoint a commission, to consist of one or more discreet persons," and insert in lieu thereof, *That the commission provided for in the preceding article shall.*

Now, therefore, we, the commissioners on the part of the said Choctaws and Chickasaws, do hereby assent and agree to the said amendments above written, the same having been interpreted to us, and being fully understood by us.

Witness our hands and seals this 2d day of July, A. D. 1866, at Washington, D. C.

ALFRED WADE, [SEAL.]
ALLEN WRIGHT, [SEAL.]
JAMES RILEY, [SEAL.]
JOHN PAGE, [SEAL.]

Choctaw Commissioners.

WINCHESTER COLBERT, [SEAL.]
EDMUND his + mark. PICKENS, [SEAL.]
HOLMES COLBERT, [SEAL.]
COLBERT CARTER, [SEAL.]
ROBERT H. LOVE, [SEAL.]

Chickasaw Commissioners.

In presence of—

JOHN W. B. LATROBE.
CHARLES E. MIX.
P. P. PITCHLYNNE,
Principal Chief Choctaw Nation.
DOUGLAS H. COOPER.
ALFRED H. JACKSON.
W. R. IRWIN.
LEWIS S. HAYDEN.
E. S. MITCHELL,
Secretary Chickasaw Commission.

Now, therefore, be it known that I, Andrew Johnson, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution of the twenty-eighth day of June, one thousand eight hundred and sixty-six, accept, ratify, and confirm the said treaty, with the amendments as aforesaid.

In testimony whereof I have signed my name, and have caused the seal of the United States to be hereto affixed.

Done at the city of Washington, this tenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States of America, the ninety-first.

[SEAL.] ANDREW JOHNSON.

By the President:

WILLIAM H. SEWARD,
Secretary of State.

(14 Stats. at Large, 769–784.)

ACT OF MARCH 3, 1871.

Indian appropriation act

And the Secretary of the Treasury is hereby authorized to issue to the Choctaw tribe of Indians bonds of the United States to the amount of $250,000, as directed by the act of March 2d, 1861, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes." (16 Stats. at Large, 570.)

ACT OF FEBRUARY 14, 1873.

Indian appropriation act.

SEC. 3. That all authority now existing by the acts of March 2d, 1861, and March 3d, 1871, or otherwise, to

issue or deliver any bonds of the United States to the Choctaw tribe of Indians, is hereby suspended until the further action of Congress in the matter and providing for such issue and delivery. (17 Stats. at Large, 462.)

ACT OF JUNE 23, 1874.

Civil appropriation act.

That the Secretary of the Treasury is hereby directed to inquire into the amounts of liabilities due from the Choctaw tribe of Indians to individuals, as referred to in articles 12 and 13 of the treaty of June 22, 1855, between the United States and the Choctaw and Chickasaw tribes of Indians, and to report the same to the next session of Congress, with a view of ascertaining what amounts, if any, should be deducted from the sum due from the United States to said Choctaw tribe, for the purpose of enabling the said tribe to pay its liabilities, and thereby to enable Congress to provide a fund to be held for educational and other purposes for said tribe, as provided for in article 13 of the treaty aforesaid. (18 Stats. at Large, 230.)

ACT OF MARCH 3, 1875.

An act to establish the boundary-line between the State of Arkansas and the Indian country.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the boundary-line between the State of Arkansas and the Indian country, as originally surveyed and marked, and upon which the lines of the surveys of the public lands in the State of Arkansas were closed, be, and the same is hereby, declared to be the permanent boundary-line between the said State of Arkansas and the Indian country.

SEC. 2. That the Secretary of the Interior shall, as soon as practicable, cause the boundary-line, as fixed in the foregoing section, to be retraced and marked in a distinct and permanent manner; and if the original line, when retraced, shall be found to differ in any respect from what the boundary-line would be if run in accordance with the provisions of the treaties establishing the eastern boundary-line of the Choctaw and Cherokee Nations, then the surveyors shall note such variations and compute the area of the land which in that case would be taken from the State of Arkansas or the Indian country, as the case may be; and the Secretary of the Interior shall also cause any monuments set up in any former survey indicating any line at variance with the survey provided for in this act to be obliterated. (18 Stats. at Large, p. 476.)

Approved March 3, 1875.

ACT OF MARCH 3, 1881.

An act for the ascertainment of the amount due the Choctaw Nation.

Whereas, the Choctaw Nation, for itself and in behalf of individual members thereof, makes claim against the United States on account of various treaty provisions which, it is alleged, have not been complied with: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon; power is hereby granted the said court to review the entire question of differences *de novo*, and it shall not be estopped by any action had or award made by the Senate of the United States, in pursuance of the treaty of eighteen hundred and fifty-five;

and the Attorney-General is hereby directed to appear in behalf of the Government; and if said court shall decide against the United States, the Attorney-General shall, within thirty days from the rendition of judgment, appeal the cause to the Supreme Court of the United States; and from any judgment that may be rendered, the said Choctaw Nation may also appeal to said Supreme Court; *Provided*, The appeal of said Choctaw Nation shall be taken within sixty days after the rendition of said judgment, and the said court shall give such cause precedence.

SEC. 2. Said action shall be commenced by a petition stating the facts on which said nation claims to recover, and the amount of its claim; and said petition may be verified by either of the authorized Delegates of said nation as to the existence of such facts, and no other statements need be contained in said petition or verification. Approved March 3, 1881. (Stats. at Large, p. 504.)

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Supreme Court of the United States.

OCTOBER TERM, 1886.

THE CHOCTAW NATION, APPELLANT,
v.
THE UNITED STATES. } No. 848.

THE UNITED STATES, APPELLANT,
v.
THE UNITED STATES. } No. 850.

APPEALS FROM THE COURT OF CLAIMS.

Brief of points on behalf of the United States.

Supreme Court of the United States.

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THE CHOCTAW NATION, APPELLANT,
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THE UNITED STATES, APPELLANT,
v.
THE UNITED STATES. } No. 850.

APPEALS FROM THE COURT OF CLAIMS.

Brief of points on behalf of the United States.

The claims of the Choctaw Nation are stated in its elaborate and comprehensive petition in the alternative.

First. That the nation is entitled to recover the sum of about $9,000,000, being the amount,

with interest, of an award of the United States Senate under a submission to arbitration provided for by the treaty of 1855.

Second. That, if said award is considered invalid or annulled, the nation is entitled to a large sum, amounting, with interest, to about $27,000,000, for failure upon the part of the United States to comply with the terms and performs the obligations of the treaty of 1830.

In noticing the claims thus presented the defendant respectfully submits the following propositions:

I.

The action of the Senate was not a valid award.

1. It did not agree with the submission. By Article XI of the treaty of 1855, two questions were submitted for adjudication to the Senate:

> First. Whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September the 27th, 1830, deducting therefrom the costs of their survey and sale, and

all just and proper expenditures and payments under the provisions of said treaty; and if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or

Second. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and if so, how much.

The Senate, on the 9th day of March, 1869, after stating these questions,

Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the 1st day of January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of one dollar and twenty-five cents per acre; and further, that they be also allowed twelve and a half cents per acre for the residue of said lands.

Resolved, That the Secretary of the Interior cause an account to be stated with the Choctaws showing what amount is due them according to the above-described principles of settlement, and report the same to Congress. (R., p. 90.)

These resolutions of the Senate are claimed to be an award and judgment agreeably to the questions submitted. It is argued by the claimant that the first question is double; that, in answer to it, might be found, either that the nation was entitled of right to net proceeds, or could be "allowed," that is, arbitrarily given the net proceeds.

The defendant insists that the terms "entitled to" and "shall be allowed" are not independent propositions; that they must be construed together in answering the first submitted question and be resolved by the test of right to the net proceeds on the part of the Choctaws. The language of the preamble to the treaty and of Article XI indicates this. The preamble recites:

> Whereas the Choctaws contend that by a just and fair construction of the treaty of September 27, 1830, they are of right entitled to the net proceeds, &c.

Article XI enacts:

> The Government of the United States, not being prepared to assent to the claim set up under the treaty of September 27, 1830, and so earnestly contended for as a rule of settlement, &c.

In all the negotiations antecedent to the treaty of 1855, the Choctaws insisted on and the United States emphatically denied, this claim. (Finding XXIV, R., p. 75.) The Senate, by the adopted report of the committee, expressly decided that the Nation was not entitled of right to these proceeds by the terms of the treaty of Dancing Rabbit Creek. If not so entitled it would be a forced severance of these terms to hold that the Senate, from whim or caprice or sentiment, could allow the proceeds. The Indians proposed that their right to the "net proceeds," together with the whole subject-matter of their unsettled claims, whether national or individual, against the United States, arising under the various provisions of the treaty of September 27, 1830, should be referred to the Senate of the United States for final adjudication and adjustment. (Preamble of Treaty of 1585.) The treaty stipulated that the question be submitted for adjudication. (Art. XI.) If, then, the award was made, under the first question, as an equitable as distinguished from a legal allowance, it is at variance with the submission.

2. If the Senate determined that the Choctaws were not of right entitled to the net proceeds, but that they should be allowed a sum *in gross* in further and full satisfaction of all their claims, the award is not within the submission, is not final, and is uncertain. It cannot reasonably be contended the Senate was to act upon some dim and undefined line. Some rule of conduct was to govern its deliberations. It was sitting in a judicial capacity. The rights and claims of the Choctaws were to receive consideration; and while that consideration was to be liberal, it was also to be just and fair. And having entered upon the examination of these rights and claims, a gross sum was to be awarded and that sum fixed and stated. There is much confusion in the terms of the award. The defendant contends that by its action in deciding that the net proceeds could not be awarded as of right, their consideration was put out of the inquiry and the mingling of the two separate subjects of investigation was beyond the terms of the submission. The Indians claimed compensation for losses sustained by violation of the stipulation of the treaty

of 1830. They had received large sums of money from the United States (Findings XXIV, XXV, XXVI, 26, R., 75–79). All these matters were to be adjudicated and adjusted. And, after just, fair, and liberal consideration, a sum fixed and definite was to be allowed. The award, however, while manifestly intended for this gross sum, goes back for its expression to the language of the question of net proceeds. It does not state an amount. It does not state what were proper expenditures and payments under the treaty. It does not even comply with the submission under the latitudinarian construction, hinted at if not claimed, of the terms "shall be allowed"; for it only gives the "net proceeds" of the lands sold prior to January 1, 1859.

It is urged that the award can be sustained because it lays down a principle by which the amount can be arrived at. Is this so? The Senate directed the Secretary of the Interior to cause an account to be stated with the Choctaws, showing what amount is due them according to the above-prescribed rules of settlement—the award.

This was not a reference for mere computation. What means were furnished by which the sum could be ascertained? By what rule were the proper expenditures and payments to be arrived at? These were all essential. The attempt was made to confer upon the Secretary the power to adjudicate upon questions, which were in dispute, of just and proper expenditures and payments, and to adjust the account. This was a delegation of authority, if the functions of the Senate ceased by this act, and the duties of an arbitrator cannot be delegated. If the Senate's functions were not exhausted, the award was incomplete and not final. The Secretary was to report to Congress. For what purpose? It is left wholly uncertain whether for reference to the Senate to fix the amount or for determination by Congress. No further action was taken by the Senate.

An award is uncertain and not final if any dispute can arise concerning it.

By reference to the report of the Secretary it will be seen that, after having stated the account,

as set forth in the petition, he suggested that the Choctaws might properly be charged, in addition to the amounts deducted by him, with the sum of $530,000 and the further sum of $600,000 (Claimant's Brief, p. 67). So that if he was rightfully authorized by the rule of settlement to fix the amount due, he failed to do it; and the award is not final. On the 19th of June, 1860, the Senate Committee on Indian Affairs, having had under consideration the account stated by the Secretary of the Interior, submitted a report declaring that the sum of $648,595.75 should be deducted from the amount found due by the Secretary (Claimant's Argument, p. 68). The Senate took no action upon this report. Nor has it ever taken any action to complete and make certain this award. Nor has the amount due ever been ascertained. Congress wrangled over it for a quarter of a century. True, it has been called in numerous reports of committees an award; but these reports never received legislative recognition.

It is claimed this recognition was given by the act of March 2, 1861. On the contrary it was

carefully avoided. Congress thereby appropriated $500,000, on account of their (the Indian's) claim under the eleventh and twelfth articles of the treaty with said nation or tribe, made the 22d of June, 1855; and added a proviso, "that in the future adjustment of the claim of the Choctaws, under the treaty aforesaid, the said sum shall be charged against said Indians." There is no allusion to an award.

Further, the Choctaws themselves disputed and still dispute the accuracy of the statement of the account made by the Secretary in 1830 in several particulars They say it is inaccurate because it contains overcharges for survey and sale, improperly charges for payments to orphans, and improperly charges for correcting errors of Government agents. These are disputed matters of expenditure and payment, and can only be settled by judicial authority after litigation.

Thus much has been said because the main pretension of the claimant is that this action of the Senate was an adjudication and decision which could not be set aside by Congress. as

that would be the exercise of judicial powers on its part.

II.

The action of the Senate was set aside and annulled by the act of 1881, "for the ascertainment of the amount due the Choctaw Nation," and by the submission of both parties to the jurisdiction of the Court of Claims.

It has been seen that no amount has ever been ascertained as due the Choctaws under this so-styled award, and that controversy and litigation are required before some tribunal, either the Senate or Congress or a court, to arrive at a definite sum.

By the October of 1881 the Court of Claims was authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon. Power was granted the court to review the entire question of differences *de novo*, and it was enacted it should not be estopped by any action had or award made by

the Senate of the United States in pursuance of the treaty of 1855. If the claimants did not move this legislation, they accepted it, in all its length and breadth, by filing their statements of the differences between them and the Government and invoking a judicial trial. They insist that the supreme point of difference is whether the award is binding and should be paid, and they set forth the award and ask for judgment upon it. To this portion of the petition the defendant demurred. This demurrer was overruled. (Record, p. 33.)

Additional assignment of error.

The defendant makes the overruling of this demurrer an additional specification of error.

If the action of the Senate under the authority of the treaty of 1855 was a valid award, all the rights and claims of the Choctaws against the United States were merged in and barred by that award. It must have full effect or no effect. It is to be presumed that all these "rights and claims," as referred to in the treaty of 1855, were

presented to the Senate. These were what are called in the jurisdictional act of 1881 questions of difference. For, if it had been intended that the action contemplated should be an assumpsit upon the award, it would have been so expressed. There is no proviso in the act limiting the enacting clause. What are miscalled in argument the enacting clause and the proviso are but the grant and definition of the jurisdiction.

In one acceptation of phrases it may be said this "award" was a question of difference, in that its validity is claimed by the one party and denied by the other. But it is not a question of difference spoken of in this statute. How could the award be a difference *de novo?* What was there in it to review? The questions of difference of which it was to be the determination and settlement? Then, by the mere fact of review, the award was swept away. For the judgment, after re-examination of the differences examined by the arbitrator, would be the award and judgment of the Court of Claims, wholly disconnected and foreign from the award of the Senate and irrespective of whether the amount was differ-

ent from or the same as that claimed to have been determined under this latter. Power was granted the court to review the *entire* question of differences *de novo*. This embraced every contested claim and right under any and all treaties; and, as there were none after the award, the review overrode and annulled the award. But, as if to make the intention doubly plain, it was enacted that the court shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of 1855. If effect is to be given to these words, there can be no doubt that the act of jurisdiction, if exercised, compels a review of the matters of controversy, independent of the action of the Senate, and the claimants recognize and accede to the results of the legislation by coming within the jurisdiction.

III.

The alternative claim for a large sum for failure upon the part of the United States may be considered under the following particulars:

1. The claim to the net proceeds.

The claim set up in 1854 and presented to the Senate, that the Choctaws were entitled to be paid and receive the net proceeds resulting from the sale of the lands ceded by the treaty of 1830, is still insisted on. It is urged that this right grows out of the provisions of Article IV of the treaty of 1820, Article VII of the treaty of 1825 (amendatory of said article 4), and the provisions of the eighteenth article of the treaty of 1830.

By the first two, it was provided the boundaries of the Choctaw country east of the Mississippi should remain without alteration until the period at which said nation should become fit to become citizens, when Congress should apportion the lands in severalty, with the consent of the nation. Thecontestation, is this was a grant in fee and entitled them of right to be paid the price received for their lands. But all the provisions of these treaties were merged in the treaty of 1830, by which all these lands were ceded to the United States. Valuable considerations were given and clearly and explicitly named in the

instrument. Reservations were provided for of different kinds, and the manner in which they could be secured and sold by the reservers stated. But nowhere is any allusion made to the payment to the Indians of any proceeds of land sold by the Government. In every treaty, and there have been several, where the net proceeds have been given, that agreement has been expressly embodied as a compensation for the lands. The claim here, as far as appears from the record, was not directly made until 1854. (Record, pp. 77–85.)

It is further insisted that a proper construction of the following provision of the eighteenth article of the treaty of 1830 gives these proceeds to the Choctaws and requires that they be held in trust for the nation: "And for the payment of the several amounts secured in this treaty the lands hereby ceded are to remain a fund pledged for that purpose until the debt shall be provided for and arranged." The ceded lands are a fund pledged for the purpose of paying the amounts secured in the treaty; and the debt to be pro-

vided for and arranged is the debt created by the stipulations of the treaty. There is no warrant nor necessity to go outside the instrument for explanation. The ordinary meaning and connection of the words afford a clear rule of interpretation. All other is fanciful. And thus it was considered by the report of the committee of the Senate and the decision of the Court of Claims, in both of which it is concluded that the claimants are not entitled of right to the "net proceeds."

2. Claims under the fourteenth article of the treaty of 1830.

The scope of the treaty of 1830 was provision for Indians who should remain east of the Mississippi and those who should remove to the lands granted in the Indian country. These latter lands were the same ceded by the treaty of 1820; but the grant under the treaty we are considering was made in fee simple.

The fourteenth article provided reservations for those Choctaw heads of families who desired to remain and become citizens of the States.

There was no limit to the number of these; but the proposals for the basis of the treaty estimated that 200 families would desire to remain; and in the third article the nation agreed to remove as early as practicable, and within three years; and in the third article of the supplementary article to the treaty, "the Choctaw people, now that they have ceded their lands, are solicitous to get to their new homes early as possible."

The land ceded east of the Mississippi was estimated before survey at 7,960,000 acres, and if all the Indians remained would have nearly been appropriated by these reservations. (Findings, Record, p. 78.)

The register returned by Ward, the agent in 1831, of those desiring to remain showed but sixty-nine heads of families. By act of Congress passed in 1837 and continued in force in 1838, a commission was appointed to examine and report the number of those who were entitled to reservations by having complied with or offered to comply with the requisites of the treaty of Dancing Rabbit Creek. The matter

Kunkle valve No. 6, a 1-inch valve. This valve has a flat flange around valve head, and an adjustable ring with flat upper surface around the ground joint. The space between said flange and ring, as it was when I made the experiments ending at 12h. 5 m. p. m., was .11 in., measured vertically when the valve was seated. It had, therefore, no stricture. The compression of spring for 100 lbs. per sq. in. under the valve (lifting pressure), when closed was .21 in.

Experiment No. 17.

With Kunkle valve No. 6, 1 in.:

Pops with little or no warning at	101½ lbs.
Closes promptly at	98½ "
Reduction	3 per cent. = 3 "

Tried many times.

Experiment No. 18.

I again tried this same valve, Kunkle No. 6, with its adjustable ring screwed up to within .08 in. of the under side of flange when valve was seated. There was still no approach to any stricture, but the adjustment of the parts was disarranged. Same spring and same compression as in experiment No. 17.

With a good fire, no other steam drawn from boiler, the steam pressure rose pretty steadily, being recorded each minute, and sometimes oftener, from 100 lbs. at 2h. 3m. 20sec. to 110 lbs. at 2h. 13m. 0sec., 10 lbs. rise in 9m. 40sec., about a pound per minute, when the opening became sufficient to discharge all the steam then
256 made. The fire burned down, some steam was blown off, and at 2h. 15m. 25sec. the valve closed very gently. No pop had taken place.

I then experimented with this same valve, Kunkle No. 6, 1-inch diameter, at the same time and place, with its adjustable ring screwed down to its former position, or as nearly as so as I could measure, that is, .11 opening between top of ring and bottom of flange, about as in experiment No. 17. Spring as before.

Experiment No. 1.

With 1-inch Kunkle valve No. 6.

2h. 17m. 45sec. warns at	101 lbs. per sq. in.
2h. 17m. 50sec. pops at	101½ " " " "
2h. 18m. 10sec. shuts up at	100 " " " "

Reduction, 1½ from warning.

Again, with as hot a fire as could be made, this small valve being over-tasked:

2h. 19m. 20sec. pops at	101	
2h. 20m. 0sec. continues at	102	
2h. 21m. 0sec. " "	103	Fire very hot.
2h. 22m. 0sec. " "	103½	" " "
2h. 23m. 0sec. " "	103½	" " "
2h. 24m. 0sec. shuts up at	100	

The area of the cylindrical opening at the inner circle of this ring was, while the valve was seated, 2.75 × 3.1416 = 8.6394 × .28 in. = 2.419 sq. in.

The area of the cylindrical opening at the inner circle of the small rim projecting downward .02 in. below general surface of lower
254 side of flange around valve-head, valve seated, was 2.95 × 3.1416 × .26 in. = 2.41 sq. in.

The openings at these two points are substantially alike. When the valve is fully open, assuming it to be raised .07 in., this opening becomes 3.03 in the former and 3.06 in the latter, or say 3.03 in both. This is 6.1 times the cylindrical opening at inner circle of ground joint when valve is raised .07 in. (3.03 ÷ .495 = 6.1); it is twice as much as the annular area around the valve-head inside of adjustable ring (3.03 ÷ 1.528 = 1.99); and this annular area of passage up from ground joint between valve-head and ring is 3.1 times as great as the cylindrical opening at the inner edge of the ground-joint (1.528 ÷ .495 = 3.09).

Here is no stricture. The passage enlarges all the way from within outward, or is fairly bell-muzzled like a blunderbuss, open-mouthed like a trumpet.

In fact, in all these Kunkle valves, there being no stricture and no overlap, the effect of increased radial distance from the axis of steam-way on the size of the area opened is precisely as if the passage had parallel sides, a level, stationary bottom, and a cover hinged at the axis of the valve. Given any opening whatever at the inner edge of ground-joint, and the opening at any other point further out, radially, will be proportioned as its radial distance from the centre. Of course this applies only to cylindrical areas between flat surfaces,

In my opinion, it is impossible to find in this valve, "Exhibit B, No. 1," any mechanical equivalent for Richardson's alleged proportions of stricture, since no stricture is to be found in it.

The important action of steam escaping through orifices in the case, in removing a part of the atmospheric pressure from the upper surface of the valve, is very interesting. I have never seen it produced in anything like an equal degree (save in experiment No. 14, p. 163), although it is a recognized force.

Experiment No. 16.

I also tried, at the same place and on the same eleventh day of October, some experiments with Kunkle valve No. 5, a 1-inch
255 valve having no regulating ring, but only a fixed ring rising up from valve-seat around the ground-joint, a flat flange without rim or lip, and a space of .11 in. vertically.

Warns at	98 lbs.
Pops at	101 "
Closes at	100 "

Prompt, perfect action; a dozen observations all alike.

I next experimented, at the same place and on the same day, with

Lifting effect of 7 lbs. per square inch pressure on the annular area between interior circle of ground-joint and interior circle of rim, under side of flange on valve-head, having area of 2.423 sq. in	16.961 lbs.
Lifting effect of 3.75 lbs. per sq. in. vacuum, on whole net upper surface of valve and its flange, 10.3 sq. in.	38.125 lbs.
Total auxiliary lifting force	55.086 lbs.

As this is upward pressure in pounds avoirdupois, it is to be compared with the pressure which required .625 in. compression of the spring, namely: 100 lbs. per sq. in. on an area within the ground-joint of the seated valve = 3.976 sq. in.; and 3.976 × 100 = 397.6 lbs. avoirdupois.

Now, 55.086 divided by 397.6 equals, say 0.14. But 397.6 lbs. uplift required five-eighths of an inch compression of the spring to balance it; therefore, 55.086 additional uplift will require 14 per cent. of five-eighths of an inch = .09 in. to bring the spring again to equilibrium under this increased strain, provided the pressure remains, while the valve is raised from its seat at the full pressure, 100 lbs. per sq. in., which lifted it.

This cannot be the case, since at the inner edge of the ground-
253 joint steam is discharging freeely at comparatively low pressure, and the pressure must be below 100 lbs. per sq. in. over a considerable part of the under surface of the valve. What the mean reduction of the pressure due to this cause may be, I don't know; numerous and delicate experiments would be required to determine it. I think it likely to be about the reduction which is apparent while the valve is fully open—about 1 lb. per sq. in. more than the reduction shown at the instant of closing; in this case about 2.5 lbs. per sq. in., which, applied to the area acted on, 3.976 sq. in., gives a reduction of lifting force of 3.976 × 2.5 = 9.94 lbs. avoirdupois, which, substracted from 55.086 lbs., leaves 45.046 lbs. net auxiliary lifting force.

Taking as a divisor, instead of the force at the normal 100 lbs. pressure, the actual lifting force at the observed lifting pressure = 101 lbs. = 3.976 × 101 = 401.6, or (since it comes to the same result and is more convenient) 400 lbs. avoirdupois, we have, say, 45 divided by 400 = 1.125 = 11.25 per cent.

Now, 11.25 per cent. of five-eighths of an inch is equal to .07 in., which is probably about the greatest lift of the valve from its seat during these my experiments. This would give at the inner edge of the ground-joint a cylindrical opening equal to the circumference of a circle 2.25 in di. = 7.07 in. cir., multiplied by a vertical height of .07 in., equal to .495 sq. in., certainly an ample opening.

The distance, vertically, between the flat top of the adjustable ring and the lower surface of the small rim projecting down .02 in. below the other position of the lower side of the flange around valve-head, was, during all the experiments with this valve, "Exhibit B No. 1," above detailed, .26 in., when the valve was seated; and when fully open probably, as we have seen, .07 in. more, making .33 in.

251

	While warning, lbs.	While fully open, lbs.	At closing, lbs.
1. Orifice in lip of valve, showing upward pressure and impact	+3	+7	Not noted.
2. Orifice in level part of valve-seat outside of ground-joint, downward pressure	—.5	+1.25	0
3. Orifice in side of ring, showing lateral pressure	+1.5	+3	+2.5
4. Orifice in top of ring, shows downward pressure (6 times over)	0	+⅛	0
5. Orifice in case over the valve, shows suction, to aid in holding the valve open during pop	0	+3.75	0

The sign + in the foregoing table indicates pressures above atmospheric pressure. The sign — indicates vacuum, or pounds per square inch less than atmospheric pressure. The action of this valve with the spring then in it being satisfactory (my note is, good fire, fine action), I had no occasion to change the spring.

The action of this valve is quite remarkable, and will repay a little careful study.

Some of its dimensions are as follows:

Diameter of steam-way inside of ground-joint		2.25 in.
Diameter of head of valve outside of ground-joint		2.37 in.
Diameter of outside of spring socket in steam way		1.75 in.
Diameter of interior of adjustable ring		2.75 in.
Diameter of outside edge of flange on head of valve		3.33 in.
Diameter of inside of rim on under surface of flange		2.95 in.
Diameter of exterior circle of adjustable ring		3.63 in.
Diameter of screw for compressing the spring		.38 in.
Area acted on by confined steam (valve seated)	3.976	sq. in.
Area of open steam-way around spring socket	.571	"
252 Area of ground-joint (horizontal projection)	.435	"
Area of valve when open, including ground-joint	4.411	"
Area of annular space between valve-head and ring	1.528	"
Area of annular space and ground-joint	1.963	"
Area of annular space between head of valve and inside of small rim under side of flange	2.423	"
Area of annular space between valve-head and outer circle of small rim under side of flange	4.223	"
Area of flange on valve-head over all, 3.63 diam	10.349	"
Area of cross section of compression screw, .38 diam	.11	"
Area of flange net, substantially equal to its whole area, as the compression screw bears at a point of small area, say	10.3	"

3. Lateral pressure in ring around valve-seat:

During the warning, vacuum	.5	lbs.
Highest during full opening, pop	27	"
When about to close	11	"
Immediately before closing, vacuum	.5	"
After closing	0	"

4. Downward at top of ring around valve-seat:

During warning, vacuum	1	lb.
During full opening, pop, "	.25	lbs.
While closing, "	1	"
When closed	0	"

250 5. Upward under the outer case above the valve:

During warning, vacuum	.25	lbs.
During full opening, pop, vacuum	4	"
When closed	0	"

The operation of this valve appears to be faultless. Compression of spring for 100 lbs. pressure = .41 in.

There is no stricture, the external opening between the flange of valve and ring on valve-seat being larger in area, even when the valve is seated, than the opening in the ground-joint ever is, and when the valve is fully opened, probably twice as large. The stricture being an essential element in Richardson's combination, this Kunkle valve No. 4 does not contain either the proportions or combinations of Richardson's patents, or either of them.

I also tried, at the same place and on the same day, Kunkle valve, "Exhibit B, No. 1."

This is a larger valve than any of the others tested on this occasion, being 2¼ inch diameter at the steam way—inner edge of ground joint. There were three springs accompanying "Exhibit B, No. 1," one of which, in its place in the valve, when I took it at this time for the purpose of testing it, having a compression of five-eighths of an inch for a pressure of 100 pounds per square inch under the closed valve.

Experiment No. 15.

With a good, steady fire in boiler, no other steam drawn off, this valve operated with perfect regularity, and relieved the boiler easily.

Warning at 101 pounds, during five seconds.
Popping at 101½ pounds, open eight seconds.
Closing at 99 pounds, remains closed three seconds.
Reduction of pressure 1½ pounds, say 1½ per ct.

no "huddling," and consequently no action due to anything to be found in the combinations or proportions of Richardson's patents, or either of them.

The compression of the spring for 100 lbs. was .44 in.

Experiment No. 13.

I also experimented at the same place and on the same day on Kunkle valve, "Exhibit A, No. 3," also slightly modified, the modification consisting of turning away the metal of the ring rising up from the valve-seat on its outer side, so as to reduce it to a thin ring, almost sharp at its upper edge.

Pop, without sensible warning	100 lbs.
Closes	96 "

Duration of pop, eleven seconds; duration of interval of closure, nine seconds; eight pops occurred between 10h. 50 and 10h. 53 a. m., averaging about twenty-two and one-half seconds.

Of course, the frequency and duration of the pop depends on the intensity of the fire and the rapidity of steam generation.

Here, again, is no Richardson stricture, here are no Richardson proportions; yet the action is decisive and excellent. The reduction may be considered excessive in some cases; it is only 4 lbs. = 4 per cent.; but that would be easily modified if it were worth while to make such valves.

The compression of the spring for 100 lbs. pressure is .44 in.

At the same place and on the same day I also tested Kunkle valve No. 4, put in as an exhibit in this case, and marked herein.

249 Experiment No. 14.

As the result of many observations, especially of eight consecutive openings and closings ending at 11h. 26m. a. m., I ascertained that this valve, Kunkle No. 4, with a good, steady fire in the boiler, no other steam being drawn off, warned during about eight seconds at about 100 lbs., popped at 100 lbs., closed, after remaining open twelve seconds, at 98½ lbs., a reduction of 1½ lbs. = 1½ per cent., and remained closed three seconds; whole period, from one pop to another, twenty-three seconds.

This action was accompanied by pressures in various parts of the mechanism and in various directions, as follows:

1. Upward under the flange around the head of the valve, partly impact:

During the warning, pressure	.25 lbs.
Highest during full opening, pop	24 "
Just before closing	13 "
When closed	0 "

2. Downward in level part of valve-seat outside of ground joint:

During the warning, vacuum	.75 lbs.
Highest during full opening, pop	15 "
At closing, and when closed	0 "

when the valve is seated, than the passage through the ground-joint can ever be, when opened to the utmost; and is enlarged by the very opening of the valve, in a greater degree than is the opening at the ground-joint, on account of its greater diameter, so that
247 when the valve is most widely opened and most freely discharging steam, the widely parted lips of this gaping mouth are more than twice as far apart as the ground surfaces of the valve and valve-seat.

This is, of course, inconsistent with any possible conception of a stricture, and distinctly opposed to Richardson's definition of his stricture, and to his alleged rules for proportioning it.

The spring is compressed for 100 pounds pressure .44 inch.

I also experimented at the same time and place on Kunkle valve modified, "Exhibit A, No. 2."

This is similar to "Exhibit A, No. 1," except that in this No. 2 the rising up around the ground-joint in No. 1 has been cut away. This ring served to conduct all escaping steam up, in a vertical direction, against the lip around the head of the valve. There is no part of the Richardson combination, in either of his two patents, corresponding in function to this ring.

Cutting away said ring does not enlarge the outer orifice at all. There is now no stricture, simply because no stricture existed in No. 1.

But issuing steam, guided upward in No. 1 by the ring, is left free in No. 2 by the removal of the ring, to continue on in the direction which it took in passing through the ground-joint, and so fails to act with force on the lip around the valve-head. The result of this alteration is to be seen in the following experiment:

Experiment No. 12.

Warn slightly at			98 lbs.
Blows, no audible pop, at			100 "
Blows shrill at			103, 104 "
Blows more shrill at			105 "
Blows still more shrill	106		
Blows, screams	107	10h. 48m.	A. M.
Blows, screams louder	107½	10h. 49m.	"
Blows, screams still louder	108	10h. 50m.	"

The pressure continually rising for seven or eight minutes; no reduction, but a constant rise, continual shriek, ever louder
248 as the pressure rises, but no auxiliary lifting force, or, if any, too little to be of any avail.

The steam was now shut off and the pressure blown down to 100 lbs. On again letting on steam, when the pressure fell to 102, the valve closed. Short, sudden puffs occurred now and then between 101 and 102 or 103 pounds. Now, if there was any stricture in No. 1, there was of necessity the same stricture in this No. 2, since the lips of the external orifice or passage are at the same distance apart But there is no stricture, no constriction, no relative compression

There was no limit to the number of these; but the proposals for the basis of the treaty estimated that 200 families would desire to remain; and in the third article the nation agreed to remove as early as practicable, and within three years; and in the third article of the supplementary article to the treaty, "the Choctaw people, now that they have ceded their lands, are solicitous to get to their new homes early as possible."

The land ceded east of the Mississippi was estimated before survey at 7,960,000 acres, and if all the Indians remained would have nearly been appropriated by these reservations. (Findings, Record, p. 78.)

The register returned by Ward, the agent in 1831, of those desiring to remain showed but sixty-nine heads of families. By act of Congress passed in 1837 and continued in force in 1838, a commission was appointed to examine and report the number of those who were entitled to reservations by having complied with or offered to comply with the requisites of the treaty of Dancing Rabbit Creek. The matter

of these claims still remaining unsettled, Congress passed another act in 1842, by which the commission of 1837 was revived and provision made for the examination of all claims under the fourteenth article, for the assignment of reservations to those who brought themselves within the provisions of the act, or, if the lands to which they might show themselves to be entitled had been disposed of, for certificates for an equivalent amount to be taken out of the public lands in the States of Mississippi, Louisiana, Alabama, and Arkansas, subject to entry at private sale.

Under these various enactments, the claimants insist that fifteen hundred and eighty-five heads of families were entitled to reservations, and that but one hundred and forty-three of them ever received the grants in fee simple. They demand for the remaining fourteen hundred and forty-two heads the value of 1,672,760 acres, at five and a half dollars per acre—$9,200,180, less the amount received in money and for the sale of scrip.

The court below found (Finding XIII, Record, p. 71) that the whole number who had established their rights under the act of 1842 was eleven hundred and fifty; and that one hundred and ninety-one were rejected because they had no improvements. The court held that these latter were entitled to 225,760 acres, because the obligation to show improvements was not a condition in the agreement of 1830. The court also found that the eleven hundred and fifty heads had received the scrip or land certificates, and accepted the same in lieu of the reservations (Finding XIV, Record, p. 71). One-half of this scrip was delivered to the Choctaws, and the balance funded at one dollar and a quarter per acre, with interest at 5 per cent. In 1852 this interest was stopped and an act passed providing that the value of this funded scrip, not exceeding the sum of $850,000, should be paid claimants in satisfaction of the awards, provided the payment should be ratified as a final release of all claims. This was done. (Finding XXIII, Record, p. 74.)

It is difficult to see by what mode of reasoning the claim for five and a half dollars per acre can be established. These lands had been sold by the Government for one dollar and a quarter. Their enhanced value arose from the settlement of the country by a civilized race who cultivated and improved them by intelligent labor. However this may be, the intention of the act of 1842 was to bring this whole dispute and controversy to an end. In order to accomplish this, after the unsatisfactory attempts of the agent, Ward, and the commissioners appointed under the acts of 1837 and 1838, they made the proposition to pay this large sum to the claimants on the condition that the Nation was to ratify and approve the payment as a final release. The contestation of the defendant is that this release wholly and completely extinguished all claims which had been and might be set up under the fourteenth article, as well the claims of the one hundred and ninety-one as of the eleven hundred and fifty heads.

3. Claims under the nineteenth article of the Treaty of 1830. By the nineteenth article, certain reservations were made, after reservations to nominated individuals, to persons who had improvements upon the ceded lands, divided into four classes, distinguished by the number of acres improved, each class not to contain more persons than stated in the article. The commissioners appointed for the purpose, after examination and personal survey, reported that in the first three classes the limit of those entitled was not reached; but that in the fourth class those entitled by the character of the improvement largely exceeded the number within the limit. The claimants contend that they should have the total number of acres embraced in the four classes; and that where there was a surplus in any class it should be carried to that class to which had not been reserved sufficient lands to furnish to each reserver his designated number of acres.

But it must be remembered that the number embraced in each class had been arrived at after negotiations, and was fixed by mutual agreement.

Certainty in number and character both was sought. It was therefore agreed and specifically stated that if a greater number should be found to be entitled to reservations, under the several classes, than was stipulated, the chiefs should determine who should be excluded. Both the extent and limitation were measured by persons, not by acres.

Now, the statute of 1842 gave to claimants under this article a right to establish their claims. This appears never to have been done. By the tenth section of that act all claims which were not presented to the Commissioners within one year after its passage were declared barred. Congress limited the time under the fourteenth article in all the acts passed to execute its provisions. Desiring to act in a spirit of fairness and liberality, they extended the time for these nineteenth article reservees, until, in 1842, they provided for the satisfaction of these claims and limited the time in which they should be presented.